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No. _____

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

CHARLES ROGER ABSHER, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

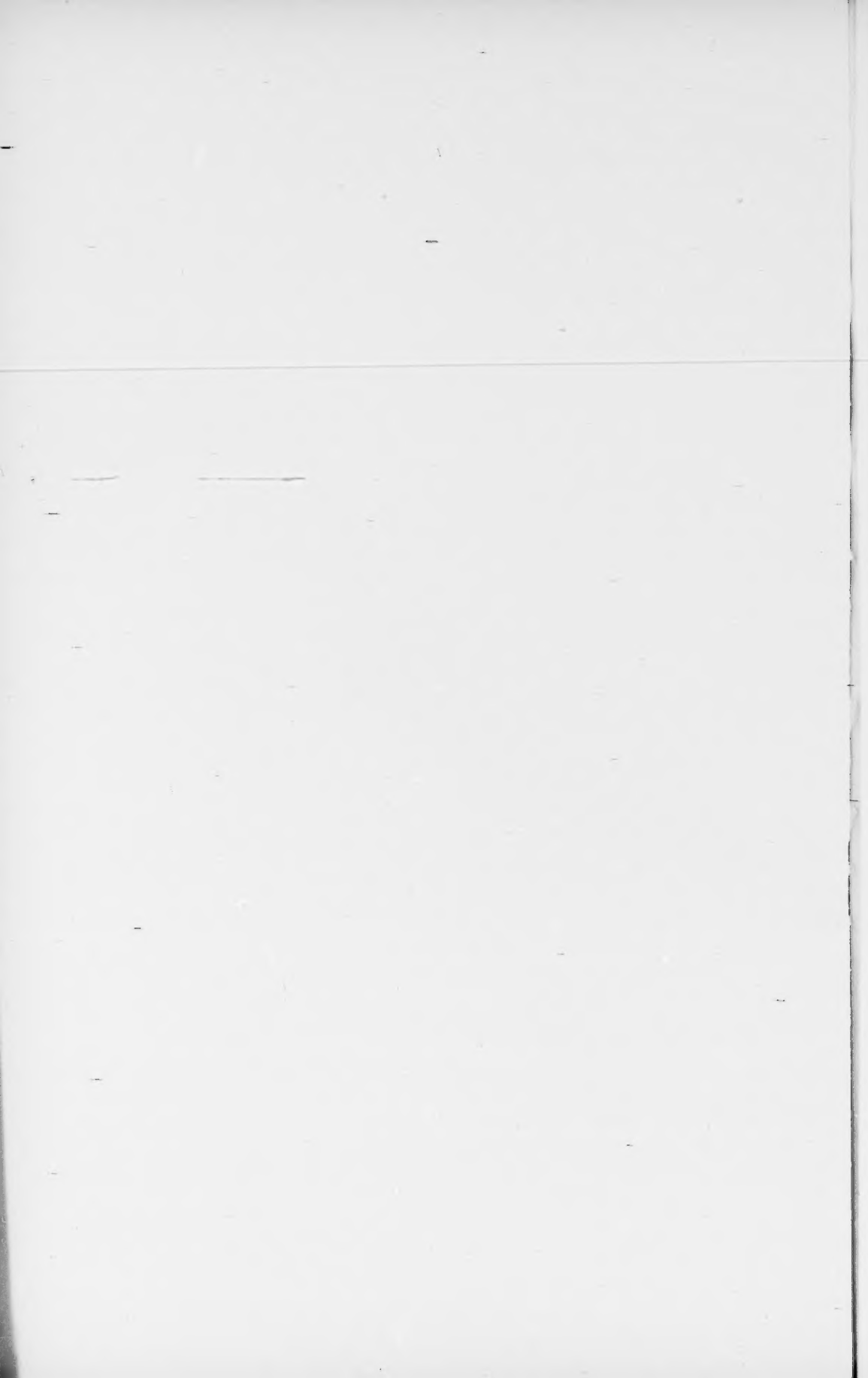
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QUESTIONS PRESENTED

Is the deprivation of longevity retired pay imposed upon career disabled veterans by 38 U.S.C. §§ 3104 and 3105, and not upon any other federal employee, unconstitutional as a denial of Fifth Amendment equal protection?

Subsidiary questions presented by the petition include:

A. Can Congress avoid the impact of the Equal Protection Clause by creating small differences between otherwise similarly situated classes to validate improper discrimination?

B. Can Congress find a rational basis for discrimination between two similarly situated classes *solely* on the basis of cost to the public fisc?

LIST OF PARTIES

The parties to the proceeding below are listed in the Appendix (App.) at 20a. The parties before this Court are the same as the parties to the proceeding below.

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Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

Petitioners Charles Roger Absher, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit, entered in the above-entitled proceeding on November 14, 1986.

OPINIONS BELOW

The opinion of the Court of Appeals for the Federal Circuit is reported at 805 F.2d 1025, and appears in the Appendix at 1a. The opinion of the Claims Court is reported at 9 Cl. Ct. 223, and appears in the Appendix at 6a.

JURISDICTION

The opinion and judgment of the Court of Appeals for the Federal Circuit was entered November 14, 1986. The jurisdiction of this Court to review the judgment

of the Federal Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

38 U.S.C. § 3704. Prohibition against duplication of benefits

(a) (1) Except to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on his own service or concurrently to any person based on the service of any other person.

38 U.S.C. § 3105. Waiver of retired pay

Any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans' Administration if he were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of his retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Veterans' Administration of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

STATEMENT OF THE CASE

Petitioners are 2,048 disabled military retirees. As retirees, they are entitled to receive retirement pay based on the longevity of their service. Each petitioner has a

physical disability, and consequently each qualifies for disability compensation under the laws administered by the Veterans' Administration ("VA Compensation").

By statute, retirees of the uniformed services are precluded from receiving both full retired pay and VA compensation. 38 U.S.C. § 3104; App. at 2a. Such retirees are required to waive a portion of their retired pay equal to any VA compensation they receive. 38 U.S.C. § 3105; App. at 2a. Absent such a waiver, military retirees are barred from receiving VA compensation. App. at 2a. Retired pay is taxed as ordinary income, whereas VA compensation is tax exempt. App. at 3a.

No other federal retirees who qualify for VA compensation are required to waive retired pay to receive VA compensation; instead—and in contrast to petitioners—they receive both full retired pay and full VA compensation. Specifically, all Civil Service employees in each of the three branches of government, certain foreign service retirees of the Department of State, and certain retirees of the Central Intelligence Agency, are entitled to receive both full retired pay and full VA compensation. App. at 9a.

Petitioners challenged the constitutionality of 38 U.S.C. §§ 3104 and 3105 in the United States Claims Court, contending that this disparate treatment among federal retirees violates their right to equal protection under the Fifth Amendment. The jurisdiction of the Claims Court was invoked under 28 U.S.C. § 1491. Following submission of cross-motions for summary judgment, the Claims Court ruled on December 3, 1985, that the statutes are constitutional. The Claims Court held that: (1) "[t]he special benefits [commissary, recreational, travel, health and eligibility to retire after 20 years' service regardless of age] accorded retirees of the uniformed services are such that this class of individuals is not situated similarly to other groups that are not re-

quired to waive retirement pay to receive tax-free VA benefits;" and (2) "[t]o the extent that the plaintiffs and other federal retirees are similarly situated, there is a rational basis for limiting the amount of compensation the plaintiffs receive." App. at 14a.

Petitioners appealed to the Court of Appeals for the Federal Circuit requesting that the decision of the Claims Court be reversed, based on the grounds that: (1) the Claims Court erred in holding that disabled military retirees are not similarly situated with other federal retirees for equal protection purposes; (2) there are two different formulations of the "rational basis" standard which have been applied by the Supreme Court, and in recent years the Supreme Court has expanded the equal protection clause and applied more rigorous scrutiny to rational basis cases; (3) the purposes of VA compensation differ sharply from longevity retired pay in that VA compensation is principally for the pain, suffering, disfigurement, and impaired earning ability caused by the disability; and (4) VA compensation is financially vital to disabled retirees, many of whom live below the poverty level.

On November 14, 1986, the Federal Circuit in a short per curiam decision affirmed the decision of the Claims Court. The Court concluded, without any analysis of whether petitioners were similarly situated with all other retirees, that "[t]his is the type of balance Congress is entitled to strike." App. at 4a. Second, in holding that there was a rational basis for petitioners' disparate treatment (App. at 5a), the Court stated that "[i]t is hard to imagine a more rational basis for congressional action than fiscal restraint." App. at 3a. Finally, in justifying the waiver requirement, the Court merely noted that "[a] waiver provision is not unique to appellants" and cited the tax exempt advantage of VA compensation as ameliorating "any . . . hardship" caused by the waiver. App. at 3a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Raises Important Questions Regarding The Degree Of Identity Required For Classes To Be Similarly Situated For Equal Protection Purposes.

The first level of equal protection analysis is whether the classes allegedly subjected to disparate treatment are similarly situated. If the classes are not similarly situated, this ends the equal protection inquiry. The Federal Circuit found without analysis—indeed without meaningful discussion—that the existence of asserted “special benefits” of uncertain value such as possible access to commissaries, space available travel and military and VA health facilities prevent petitioners from being similarly situated.¹ The result in the Federal Circuit suggests that there must be perfect identity between classes being compared for equal protection purposes.

If this holding is correct, then Congress can avoid application of the equal protection doctrine and effect discrimination without the requisite rational basis justification, costing the putative class members thousands of dollars each, by simply giving each member some small benefit, perhaps even of *de minimis* value. However, neither the Fifth nor the Fourteenth Amendment require perfect identity of the classes. If perfect identity were required, equal protection would almost never be invoked. Since there is almost never perfect identity between the classes, the similarly situated analysis implicates a broader concept than classical symmetry.

Accordingly, the focus is not on identity and perfect symmetry, but on how much differentiation between the classes is acceptable. This often depends upon the kind of claim being made, with the acceptable level of differ-

¹ The illusory nature of the “special benefits” is discussed below at p. 8 n.8.

entiation varying with the claim.² Thus, the first level of analysis—whether the classes are similarly situated, and the second level of analysis—whether there is a rational basis, are both separate and interrelated.³

Few cases analyze the issue of whether two classes are similarly situated.⁴ The answer to this inquiry has usually been self-evident, and the reviewing court focuses only on the rational basis question.⁵ Indeed, the sim-

² *City of Cleburne, Texas v. Cleburne Living Center*, 105 S.Ct. 3249, 3262 (1985) (Stevens, J., concurring) ("it is because the characteristics of these groups are sometimes relevant and sometimes irrelevant to a valid public purpose, or . . . to the purpose that the challenged laws purportedly intended to serve.")

³ "The similarly situated doctrine merely serves to shift the constitutional question from one of defining 'equal protection of the laws' to one of determining when two persons are or are not alike for the purposes of the fourteenth amendment." Note, *Impermissible Purposes and the Equal Protection Clause*, 86 Colum. L. Rev. 1184, 1185 n.10 (1986) [hereinafter cited as *Impermissible Purposes*].

⁴ Those cases that do address this issue usually relate to gender based discrimination, an area of inquiry unrelated to the case at bar. See, e.g., *Rostker v. Goldberg*, 453 U.S. 57 (1981) (males and females not similarly situated with respect to registration for the draft); *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464 (1981) (males and females not similarly situated with respect to statutory rape); *Kirchberg v. Feenstra*, 450 U.S. 455 (1981) (males and females similarly situated with respect to management and disposition of community property); *Caban v. Mohammed*, 441 U.S. 380 (1979) (unwed mothers and fathers similarly situated with respect to adoption of their children); *Craig v. Boren*, 429 U.S. 190 (1976) (males and females similarly situated with respect to age at which beer legally purchased); *Schlesinger v. Ballard*, 419 U.S. 498 (1975) (male and female Naval officers not similarly situated with respect to service opportunities); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (male and female Air Force officers similarly situated with respect to spousal dependency requirement); *Reed v. Reed*, 404 U.S. 71 (1971) (males and females similarly situated with respect to administration of decedents' estates).

⁵ When the determination of whether classes are similarly situated is not obvious, the analysis becomes quite difficult. "Nothing

ilarly situated issue is generally subsumed by the rational basis analysis. It is, therefore, not surprising that the Federal Circuit cited no case law in support of its conclusion that petitioners are not similarly situated with all other federal retirees. App. at 4a. What is surprising is that the Federal Circuit did not attempt to analyze this issue in any respect, and merely concluded that "[t]his is the type of balance Congress is entitled to strike".⁶ App. at 4a. This issue was, however, pressed vigorously below, with petitioners contending that: (1) there are many groups of federal civilian retirees (in addition to petitioners) who are entitled to retire regardless of age (or at age 50 with 20 years' service);⁷ and (2) that other special benefits, such as commissary, travel and health, are of such minor and illusory importance that they do not distinguish petitioners from their civil-

in the words of the Fourteenth Amendment specifically addresses this question in any way." *Trimble v. Gordon*, 430 U.S. 762, 780 (1977) (Rehnquist, J., dissenting). See *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) (discussing the difficult task of establishing when persons are "similarly circumstanced.")

⁶ Neither the Claims Court nor the Federal Circuit identified any federal retirees (except for disabled military retirees) who are required to waive retired pay in order to receive VA compensation.

⁷ The Federal Circuit, in summarizing the Claims Court decision, stated that petitioners receive early retirement "without making financial contributions to a retirement fund." App. at 2a. On closer scrutiny, this does not create a meaningful distinction from the other federal retirees. The government itself recognizes that Civil Service retirees, whose retirement plan is "contributory", collect far more retired pay than their contributions: "the employee and matching agency contributions do not come close to meeting the expenses of the Civil Service Retirement Fund." Brief for the United States as Respondent at 6-7 n.7, *Zucker v. United States*, cert. denied, 106 S.Ct. 129 (U.S. Oct. 7, 1985) (No. 85-6) (citing U.S. Office of Personnel Management, *Compensation Report, Fiscal Years 1981 & 1982* at 31 (1984) (emphasis added). Civil Service retirement is funded by the United States Treasury to substantially the same extent as military retirement pay.

ian counterparts.⁸ Notwithstanding, the Federal Circuit never discussed these arguments.

Other key, but unanswered, questions include how much difference and what kinds of differences between the classes is acceptable? Must this difference be balanced against the level of disparate treatment? For example, if we assume that a petitioner would save \$300 annually by shopping at a commissary—assuming he lives close enough to one to use it—does this “special benefit” cause the petitioner to be not similarly situated and thus lose annual VA compensation of several thousand dollars because the equal protection doctrine cannot apply? Should

⁸ Use of such minor, insignificant “special benefits” to distinguish plaintiffs from their civilian counterparts “is a distinction without a difference. . . .” *Metropolitan Life Ins. Co. v. Ward*, 105 S.Ct. 1676, 1684 (1985). Two points are relevant here. *First*. On closer examination, the ability of military retirees to utilize these benefits depends almost entirely upon whether they live near military facilities offering such benefits. Even assuming accessibility, many of these asserted benefits are of minimal value. For example, the recently published Grace Commission report states that “the savings to the commissary customers would be about equal” to those offered by civilian discount stores. Grace Commission Report at 136 (June 20, 1983). Further, military retirees and their dependents have virtually the last priority in obtaining military medical care, and are often forced to use CHAMPUS coverage with their share of the medical costs ranging from 20% to 25%. Finally, the continued existence of these benefits at even these minimum levels is uncertain.

Second. Petitioners are not the only class receiving these benefits. For example, the following classes receive these very same benefits: (1) military longevity retirees with subsequent Civil Service employment who include their military service in the calculation of their Civil Service annuities; and (2) disabled military retirees with less than 20 years’ service. Finally, veterans with VA disability ratings of 100% (with only a minimal active duty requirement) and their unmarried surviving spouses receive commissary, post exchange and travel benefits. Simply put, these benefits are not uniquely the property of petitioners.

the value of these *de minimis* special benefits be compared with the amount of VA compensation at stake?⁹

A survey of the meager extant case law reflects that these questions have not been answered. Thus, this case will give the Court the opportunity to address these important questions, and provide needed guidance to the lower courts. Plenary consideration of the matter by this Court is essential.

II. The Decision Below Conflicts With This Court's Recent Use Of More Rigorous Rational Basis Review.

The Federal Circuit provided almost no analysis of the application of the rational basis standard to the case at bar, except to note that petitioners' authorities "do not undermine the decision of the Claims Court." App. at 5a. The Claims Court in turn simply noted that protection of the federal fisc "is, of course, a proper object of congressional concern." App. at 12a-13a (citing *Puglisi v. United States*, 564 F.2d 403, 409 (Ct. Cl. 1977)). Reliance on the simple reduction of public expenditures ignores the rational basis standard as recently articulated and employed by this Court. It also ignores, as discussed at pp. 19-29 below, that saving money alone does not justify a violation of equal protection.

Four times during the 1984-1985 term this Court used the rational basis standard to invalidate statutes or a municipal ordinance. None of these four cases involved either "fundamental" rights or "suspect" classifications.¹⁰

⁹ When the reviewing court considers the rational basis question, even *de minimis* variations of funding between similarly situated classes implicate the Equal Protection Clause. *Papasan v. Allain*, 106 S.Ct. 2932, 2946 n.17 (1986); compare *id.* at 2952 (Powell, J., Burger, C.J., and Rehnquist, J., concurring in part and dissenting in part).

¹⁰ These cases are: *Metropolitan Life Ins. Co. v. Ward*, 105 S.Ct. 1676 (1985); *Williams v. Vermont*, 105 S.Ct. 2465 (1985); *Hooper v. Bernalillo County Assessor*, 105 S.Ct. 2862 (1985); and *City of*

This Court's recent reiteration that the "rational basis standard is 'not a toothless one'"¹¹, was prophetic; the Court "has [now] given it teeth."¹² Analysis of these four cases, and their cumulative impact on equal protection law and the matter at bar, follows.¹³

Cleburne, Texas v. Cleburne Living Center, 105 S.Ct. 3249 (1985). The following analysis borrows generously from Stewart, *Supreme Court Report: A Growing Equal Protection Clause?*, 71 A.B.A.J. 108 (Oct. 1985) [hereinafter cited as Stewart]; and *Impermissible Purposes*, *supra*.

¹¹ *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981) (citing *Mathews v. Lucas*, 427 U.S. 495, 510 (1976). Cf. *Trimble v. Gordon*, 430 U.S. 762, 767 (1977) (scrutiny applied to classifications based on illegitimacy is not "toothless").

¹² Ratner, *A New Legal Duty For Urban Public Schools: Education in Basic Skills*, 63 Tex. L. Rev. 777, 842 n.304 (1985) [hereinafter cited as Ratner]; Stewart, *supra*, at 112, 114. "The Burger Court has applied the [rational basis] test more stringently [than the Warren Court]." Ratner, *supra*, at 842 n.304. Its opinions, however, neither acknowledge nor justify any departure from traditional standards. *Impermissible Purposes*, *supra*, at 1187 & n.22.

¹³ These four cases had their antecedents in, *inter alia*, *Zobel v. Williams*, 457 U.S. 55 (1982) (Alaskan revenue disbursement plan based on years of residency violated equal protection because unequal allocation of benefits serves no legitimate state purpose); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 438-42 (1982) (separate opinion of Blackmun, J.) (Illinois scheme for adjudicating allegations of employment discrimination violated equal protection because division of claimants for disparate treatment is arbitrary); *id.* at 443-44 (Powell, J., concurring in judgment) (state-created classification does not bear rational relationship to legitimate government objective); and *United States Dep't of Agriculture v. Moreno*, 413 U.S. 528 (1973) (federal statute limiting eligibility for food stamp benefits to households comprised only of related members does not bear rational relationship to legitimate governmental interest). Seminal research on increased rationality review was done by Professor Gerald Gunther. Gunther, *The Supreme Court, 1971 Term—Forward: In Search of an Evolving Doctrine on a Changing Court; A Model for a Newer Equal Protection*, 86 Harv. L. Rev. 1, 17-20, 25-37 (1972).

The Court first invalidated on equal protection grounds an Alabama statute that taxed foreign insurance companies more heavily than Alabama insurance companies. *Metropolitan Life Ins. Co. v. Ward*, 105 S.Ct. 1676 (1985). The Court then reinstated an equal protection challenge to a residents-only exemption from the Vermont use tax on automobiles purchased out of state. *Williams v. Vermont*, 105 S.Ct. 2465 (1985). The Court next invalidated on equal protection grounds a New Mexico tax exemption for Vietnam veterans limited to those residing in New Mexico prior to 1976. *Hooper v. Bernalillo County Assessor*, 105 S.Ct. 2862 (1985). Finally, the Court invalidated on equal protection grounds a Texas municipality's decision barring a group home for the mentally retarded. *City of Cleburne, Texas v. Cleburne Living Center*, 105 S.Ct. 3249 (1985).¹⁴

The commentators view these cases as "reflecting the expansion of the equal protection clause . . . to reach perceived injustices that otherwise lie beyond constitutional reach." Stewart, *supra*, at 112, 113. This "Court is not only requiring a better fit between governmental means and ends, but also is scrutinizing more actively the purposes of a governmental classification, . . . breathing life into . . . minimum scrutiny." *Impermissible Purposes*, *supra*, at 1190-91. Another commentator has suggested that the Court "may well confine itself to more vigorous rational basis review and ignore intermediate-level scrutiny altogether." Stewart, *supra*, at 116. ". . . *Cleburne* stands as a precedent for the application of a form of heightened scrutiny to all legislative classifications." *The Supreme Court, 1984 Term, Leading Cases*, 99 Harv. L. Rev. 120, 167 (1985). "[T]he Court in *Cleburne* introduced into its analysis a hostility to

¹⁴ Tax statutes were invalidated in three of these 1985 cases, notwithstanding the hornbook rule that "in taxation, even more than in other fields, legislatures possess the greatest freedom in classification." *Madden v. Kentucky*, 309 U.S. 83, 88 (1940).

legislative overbreadth that it had formerly reserved only for cases meriting heightened scrutiny . . . suggesting that such analysis is appropriate in any case involving 'social [or] economic legislation.'" *Id.* at 172. "An inquiry into constitutional principle, not mathematics, determines whether heightened scrutiny is appropriate." *City of Cleburne, Texas v. Cleburne Living Center*, *supra*, 105 S.Ct. at 3271 (Marshall, J., concurring in part and dissenting in part).

This recent expansion of the equal protection doctrine takes on firmer contours when viewed against the following historical constitutional perspective.¹⁵ In the 20th century, the Supreme Court typically and rather consistently has employed a "rational basis" approach when reviewing socio-economic legislation.¹⁶ However, the standards governing this test have not remained constant. During roughly the period 1900 to 1935, the Supreme Court applied the standard articulated in *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). Under the *Guano* standard, any legislative classification required a demonstrably fair and substantial relation to its legislative objective in order to pass the Court's scrutiny. "Although the classification may be rational in a literal sense, the Court can still find that it does not have a fair and substantial relation to the object of the law."¹⁷ Between 1935 and 1970, the Court tended to

¹⁵ The following analysis borrows generously from 3 J. Choper, Y. Kamisar & L. Tribe, *The Supreme Court: Trends and Developments: 1980-1981*, pp. 1-18, National Practice Institute, Minneapolis (1982) [hereinafter cited as Choper, Kamisar & Tribe].

¹⁶ The standard of review applicable to this case is the "rational basis" test. Neither "fundamental" rights nor "suspect" classes are involved here.

¹⁷ Choper, Kamisar & Tribe, *supra*, at 4. "[T]he Court was giving a broad reading to both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to invalidate legislation. . . ." *Trimble v. Gordon*, 430 U.S. 762, 785 (1977) (Rehnquist, J., dissenting).

adopt a less activist, more lenient standard, associated with *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911). Under *Carbonic Gas*, legislative classifications merely had to have some reasonable, conceivably possible and not wholly arbitrary basis to pass constitutional muster.¹⁸

From 1970 to the present the Court's holdings at first vacillated between the *Guano* and *Carbonic Gas* standards,¹⁹ but in 1985 a new trend emerged from this transitional period. Now, as discussed above, it appears that *Guano* is the paramount standard. The uncertainty of this transitional stage is largely behind us.

Viewed against this historical background, it is indeed regrettable that the Federal Circuit's constitutional analysis is, at best, superficial.²⁰ Its truncated analysis is summarized as follows: (1) there is a rational basis under both the *Guano* line of cases and *United States Railroad Retirement Bd. v. Fritz*;²¹ (2) the relevant statutes have been on the books "for nearly a century" (App. at 5a), and Congress has rejected statutory amendments "many times" (App. at 3a); and (3) "[a] waiver provision is not unique to appellants." App. at 3a. Brief consideration of these matters is appropriate.

A. In 1985 this Court put teeth in the rational basis standard.

As seen above, this Court clarified the rational basis standard in 1985: it adopted the *Guano* test and rejected the "anything goes" test of *Carbonic Gas*. This crucial

¹⁸ "[T]he *Carbonic Gas* test [says that] pretty much . . . anything goes. . . ." Choper, Kamisar & Tribe, *supra*, at 8.

¹⁹ Choper, Kamisar & Tribe, *supra* at 9, 17. See also *Impermissible Purposes*, *supra*, at 1186-87 & n.22, 1191.

²⁰ The opinion is six pages in length. Its "constitutional analysis [is] incomplete." *Trimble v. Gordon*, 430 U.S. 762, 769 (1977).

²¹ 449 U.S. 166 (1980) [hereinafter cited as *Fritz*]. App. at 4a-5a. *Fritz* is the modern statement of the *Carbonic Gas* line of cases.

refinement of equal protection analysis provides a new dimension in the decisional background of the case at bar. We are dealing here with political decisions on socio-economic matters made by Congress; the question we confront is whether these political decisions pass constitutional muster.²² This Court is now taking a more critical view of the litmus test for passing constitutional muster.

In 1980 Justice Rehnquist wrote the majority opinion in the *Fritz* case.²³ Notwithstanding his affection for the *Carbonic Gas* test, he provides candid insight into the inconsistency of this Court's equal protection cases before the 1985 expansion of the rational basis test. His words are prophetic.

²² "As Professor Paul A. Freund has said, the great deference due a legislative judgment is justified 'insofar as the legislature . . . indulge[s] in a generalization when it acts; but to the extent that the legislature particularizes it approaches the judicial arena' and it 'should be so judged on review.'" Auerbach, *The Anatomy of an Unusual Economic Substantive Due Process Case: Workers' Compensation Insurers Rating Association v. State*, 68 Minn. L. Rev. 545, 579 (1984) (citation omitted).

²³ The *Fritz* case met mixed reviews, if not outright criticism. For example: "*Fritz* is a striking example of a . . . Madisonian nightmare: national legislators abdicating their obligations because of pressure applied by powerful private groups." Sunstein, *Interest Groups in American Public Law*, 38 Stan. L. Rev. 29, 71 (1985).

Fritz was decided in 1980, during the recent transitional development of the rational basis case law, several years prior to the emerging trend articulated by this Court in 1985. Under the *Carbonic Gas* test, as Justice Stewart once observed in connection with challenges to mergers pursuant to Clayton Act § 7, ". . . the Government always wins." *United States v. Von's Grocery Co.*, 384 U.S. 270, 301 (1966) (Stewart, J., dissenting). During the last decade, this Court has moved away from the prior tests of merger legality largely because they provided no meaningful distinctions and no analytical framework. For the same reason, we submit that this Court has backed away from the *Carbonic Gas* test—to provide meaningful distinctions and an analytical framework—so that the government does not always win.

The most arrogant legal scholar would not claim that all of these cases applied a uniform or consistent test under equal protection principles. And realistically speaking, we can be no more certain that this opinion will remain undisturbed than were those who joined the opinion in *Lindsley* [v. *National Carbonic Gas Co.*], *supra*, *Royster Guano Co.*, . . . or any of the other cases referred to in this opinion and in the dissenting opinion. *Fritz, supra*, at 176-77 n.10.

To this day, "[m]embers of the [Supreme] Court continue to hold divergent views . . . about the degree of deference afforded the legislature in suiting means to ends, compare *Lindsley v. National Carbonic Gas Co.* . . . with *F.S. Royster Guano Co. v. Virginia*" *Schweiker v. Wilson*, 450 U.S. 221, 243 n.4 (1981) (Powell, J., dissenting). "No bright line divides the merely foolish from the arbitrary law." *Id.* at 243. This is the constitutional matrix against which the case at bar must be judged.

B. The new teeth of the rational basis test are not being applied properly by the lower courts.

The requirement that, of all federal employees, only career disabled veterans must waive retired pay is arbitrary. The Constitution requires that if by statute the conduct of one person or group produces a certain legal consequence, while the same conduct of another person or group produces a different legal consequence, there must be some rational distinction between the persons or groups in question sufficient to warrant the ascription to them of different legal consequences for their acts. Since no justification exists for the requirement that only career disabled veterans must waive some or all retired pay to receive VA compensation (and not other disabled, retired federal employees), this disparate treatment of similarly situated persons is a denial of equal protection. Viewed in the light of day, the Federal Circuit's analysis conflicts with this Court's recent rejection of the "anything goes" rational basis test.

C. Old age does not validate an otherwise improper statute.

That the predecessors of the statutes here in question go back to 1890 and 1891 (App. at 3a) is not decisive. The Federal Circuit merely reported historical facts when it observed that “[f]or nearly a century Congress has held to the consistent view that there was no entitlement to both retired pay and a disability pension for the same period of military service.” App. at 5a. Equal protection applies with equal force to all statutes, old and young alike.

[H]istory makes clear that constitutional equality, like constitutional principles of liberty, property, and due process, evolve over time; what once was a “natural” and “self-evident” ordering later comes to be seen as an artificial and invidious constraint on human potential and freedom Shifting cultural, political, and social patterns at times come to make past practices appear inconsistent with fundamental principles upon which American society rests, an inconsistency legally cognizable under the Equal Protection Clause. *City of Cleburne, Texas v. Cleburne Living Center*, 105 S.Ct. 3249, 3268-69 (1985) (Marshall, J., concurring in part and dissenting in part).

“[T]he Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do change*.” *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 669 (1966) (emphasis in original).²⁴

²⁴ Three separate principles can be distilled from the case law in this area which apply to the case at bar. *First*. Standards, cul-

In the same vein, the Federal Circuit's statement that "[a]lthough Congress has many times considered further amendments to the statute, it has not changed its view that the . . . legislation represents sound fiscal policy" (App. at 3a) is irrelevant. The failure of Congress to amend the waiver statutes does not dispose of the question whether the statutes are constitutional, nor is this failure a reliable indicator that Congress found the existing system to be fair and constitutional. See *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 382 n.11 (1969); *Gemsco, Inc. v. Walling*, 324 U.S. 244, 265 (1945). Even if Congress had expressed its belief in the constitutionality of the waiver statutes, "it is the responsibility of this Court to act as the ultimate interpreter of the Constitution." *Powell v. McCormack*, 395 U.S. 486, 549 (1969). That Congress may have a different view regarding the constitutionality of a given statute "cannot justify the courts' avoiding their constitutional responsibility." *Id.* (footnotes and citations omitted).²⁵ Indeed, the fact that Congress has failed to take action is indicative of the need for the courts to exercise jurisdiction.

tural imperatives and social mores change over time. *Second.* A statute may have been constitutional when enacted, but subsequent legislation can create discrimination that sets equal protection into motion. *Third.* A statute may have been unconstitutional when enacted, yet not have been judicially challenged.

²⁵ Nor are the waiver statutes entitled to any special deference because they relate to military affairs. See *United States v. Robel*, 389 U.S. 258, 263-64 (1967), quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 426 (1934); *Shaw v. United States*, 357 F.2d 949, 954 (Ct. Cl. 1966) (no deference "where the serviceman presents pure issues of constitutional law"); Michelman, *The Supreme Court, 1985 Term—Forward: Traces of Self-Government*, 100 Harv. L. Rev. 4, 12 (1986).

D. No career federal employees, other than disabled veterans, are required to waive retired pay to receive VA compensation.

The statutory scheme in this case is so out of kilter that bizarre, inequitable results occur.

Scenario: A disabled military retiree becomes a federal civilian employee. The military retiree receives retired pay reduced by his VA compensation. The military retiree subsequently retires from the civil service, waives all of his military retired pay, and includes his years of military service with his civilian service in the calculation of his (higher) civil service retirement annuity. *Cf. Bailey v. United States*, 511 F.2d 540, 544 (Ct. Cl. 1975). The retiree now is no longer required to waive, and receives *both* a full civil service annuity *and* VA compensation. The waiver requirement, or disability-holdback, is avoided simply by waiving military retired pay and including this military service in the calculation of civil service retirement.

The Federal Circuit distorted this Alice-in-Wonderland result when it attempted to use this example to support its contention that "[a] waiver provision is not unique to appellants." App. at 3a. Inexplicably, the Federal Circuit omitted from its analysis the crucial facts that the retiree in its example is entitled to receive: (1) a full civil service annuity; (2) full VA compensation; and (3) all "special benefits" of military retirement. In other words, the retiree is no longer required to waive merely because he converted his military retirement to civilian retirement. Common sense dictates that this sleight of hand is indefensible discrimination against petitioners.²⁶

²⁶ At the heart of the Federal Circuit's waiver analysis is the unarticulated notion that petitioners should not receive two forms of compensation (longevity retired pay and VA compensation) for the same period of service. But, as the government has argued in another context, "veterans' disability benefits are not remuneration

Lower courts need guidance from this Court as to the parameters of the more rigorous rational basis standard now applicable to socio-economic legislation. This Court can resolve this problem and prevent wasteful litigation of this constitutional issue in the lower courts.

III. The Opinion Below Conflicts With This Court's Decisions Holding That Saving Money Alone Does Not Justify A Violation Of Equal Protection.

The only rational basis advanced by the Federal Circuit to justify this discrimination was "fiscal restraint."²⁷ App. at 3a. Yet, almost any government compensation program that violates equal protection will arguably "save money." That equal protection may "cost" money is not and should not be a defense to inequality. One of the principal purposes of the Fourteenth Amendment is to protect the rights of people who do not have the political power to affect the Congress.

If saving money alone is an overriding consideration, then "cost, *in and of itself*, could justify the exclusion of any group of people from any government program that requires funding. This is clearly not the case." *Doe v. Plyler*, 628 F.2d 448, 459 (5th Cir. 1980), *aff'd*, 457 U.S. 202 (1982) (emphasis in original). To accept saving money as a legitimate justification for discrimination between persons similarly situated would validate a vast proportion of all governmental discrimination and

for employment." Brief for the United States as *Amicus Curiae* Supporting Appellant at 17, *Rose v. Rose*, *probable jurisdiction noted*, 106 S.Ct. 3292 (June 30, 1986) (No. 85-1206). Simply put, disability compensation is not for the same period of service as longevity retired pay but, instead, is for the disability itself.

²⁷ Petitioners, of course, do not quarrel with the proposition that Congress may "restrain spending." App. at 12a. This clearly is a "legitimate congressional objective." App. at 12a. Instead, our complaint is that Congress did not restrain spending in a constitutionally permissible way.

disembowel the goals of equal protection.²⁸ Acceptance of the contention that saving money (like the promotion of domestic industry) "is always a legitimate state purpose under equal protection analysis would eviscerate the Equal Protection Clause in this context." *Metropolitan Life Ins. Co. v. Ward*, 105 S.Ct. 1676, 1683 (1985). Indeed, under this analysis, "any discrimination subject to the rational relation level of scrutiny could be justified simply on the ground that it favored one group at the expense of another." *Id.* at 1684 n.10 (emphasis in original). Only a calculator would be necessary.

This Court has held, in many cases, that the saving of money alone is not sufficient reason for discrimination.

To sanction such a ruthless consequence, inevitably resulting from a money hurdle erected by a State, would justify a latter-day Anatole France to add one more item to his ironic comments on the "majestic equality" of the law. "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." *Griffin v. Illinois*, 351 U.S. 12, 23 (1956) (Frankfurter, J., concurring.)

In *Shapiro v. Thompson*, 394 U.S. 618 (1969), this Court held that statutory prohibition of welfare benefits to residents of less than one year created a discriminatory classification which denied equal protection. This Court while recognizing "that a State has a valid interest in preserving the fiscal integrity of its programs", held that "a State may not accomplish such a purpose by invidious distinctions²⁹ between classes of its citi-

²⁸ Ratner, *supra*, at 844 n.315 (1985).

²⁹ "[T]he Supreme Court has reiterated in recent cases that the equal protection right includes not just a right against invidious classifications but also a right against arbitrary classifications." Searchinger, *The Procedural Due Process Approach to Administrative Discretion: The Courts' Inverted Analysis*, 95 Yale L.J. 1017, 1033 n.80 (1986) (citations omitted).

zens³⁰ [I]n the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money." *Id.* at 633.

There is a line of cases which, at least superficially, can be interpreted as stating that money alone is sufficient justification for discrimination favoring one of two similarly situated classes. *See, e.g., Bowen v. Owens*, 106 S.Ct. 1881, 1886 (1986) ("[f]aced with these concerns, Congress reasonably could decide to 'concentrate limited funds where the need [was] likely to be greatest'"); *Fritz, supra*, at 176; and *Schweiker v. Wilson*, 450 U.S. 221, 237-39 & n.24 (1981). However, careful examina-

³⁰ The following cases of this Court support this proposition: *Hooper v. Bernalillo County Assessor*, 105 S.Ct. 2862 (1985) (the majority rejecting the dissent's public fisc argument stated at 2871); *Plyler v. Doe*, 457 U.S. 202, 227 (1982) ("a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources"); *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 263 (1974) ("a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens"); *United States Dep't of Agriculture v. Moreno*, 413 U.S. 528, 543 (1973) (quoting *Shapiro v. Thompson, supra*); *James v. Strange*, 407 U.S. 128, 141 (1972); *Graham v. Richardson*, 403 U.S. 365, 374-75 (1971) (quoting *Shapiro v. Thompson, supra*). "Of course, the legitimate governmental interest in restoring the Railroad Retirement system to fiscal soundness does not, in itself, serve to support the challenged classification in this case. . . . The overall interest in saving money is irrelevant to this discrimination." *Fritz, supra*, at 185 n.2 (Brennan & Marshall, J.J., dissenting). *See Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966). *Cf. Examining Bd. of Engineers, Architects & Surveyors v. Flores De Otero*, 426 U.S. 572, 604 (1976) (discrimination against aliens with respect to the distribution of public funds). "[A]lthough saving money is a valid state objective, a desire to save money is not, by itself, a legitimate basis for discriminating between persons who are similarly situated in pertinent respects." *Rather, supra*, at 843; *id.* at 844. For lower Federal court cases, see: *Medora v. Colautti*, 602 F.2d 1149, 1153 n.9 (3d Cir. 1979); *Silbowitz v. Secretary of HEW*, 397 F. Supp. 862, 866-67 (S.D. Fla. 1975); *Miller v. Laird*, 349 F. Supp. 1034, 1046 (D.D.C. 1972) (3 Judge Ct.). *See Kalina v. Railroad Retirement Bd.*, 541 F.2d 1204, 1210 (6th Cir. 1976).

tion of these cases will reflect that, with few if any exceptions, this Court found a rational basis for this disparate treatment of the classes quite distinct from budgetary reasons.³¹ In contrast, there is no independent reason in the case at bar to validate the disparate treatment of the classes except the desire to save money. The Federal Circuit's opinion makes this clear: "It is hard to imagine a more rational basis for congressional action than fiscal restraint." App. at 3a. Its search for a rational basis goes no further.

A. The only cases cited by the Federal Circuit, *Fritz* and *Puglisi*, are inapposite.

Indeed, the Federal Circuit cites but two cases in support of its "fiscal restraint" justification, *Fritz* and *Puglisi*.³² App. at 3a-4a. Both *Fritz* and *Puglisi* are distinguishable. *Fritz* upheld the constitutionality of railroad retirement legislation which barred the payment of both railroad retirement and social security benefits to certain employees. In a split decision, two Justices dissenting and one Justice separately concurring in the judgment, this Court sustained the statute against an equal protection challenge. Careful analysis of *Fritz* reflects three crucial factual differences from the instant

³¹ See, e.g., *Bowen v. Owens*, *supra*, at 1887 ("[b]ecause divorced widowed spouses did not enter into marriage with the same level of dependency on the wage earner's account as widows or widowers, it was rational for Congress to treat these groups differently after remarriage"); *Fritz*, *supra*, at 178 ("the class for whom the Railroad Retirement Act was designed . . . had a greater equitable claim to [the dual] benefits than the members of [plaintiffs'] class . . ."); and *Schweiker v. Wilson*, *supra*, at 1084-85 (assumption that inmates of public mental institutions whose care and treatment were fully provided for by state and local authorities were less needy of monthly comfort allowance than Medicaid patients).

³² *Puglisi v. United States*, 564 F.2d 403 (Ct. Cl. 1977), *cert. denied*, 435 U.S. 966 (1978) [hereinafter cited as *Puglisi*]. *Puglisi* is discussed at pp. 25-26, *infra*.

case. *First*. In *Fritz*, there were three separate, intense factfinding steps which led to the legislation restricting dual benefits, while in the instant case there was a complete absence of such factfinding regarding other federal retirees not required to waive. This exhaustive factfinding included: (a) A study by the Commission on Railroad Retirement which took two years to complete. *Fritz, supra*, at 169-170 n.3, 189-190 (dissent). (b) A Joint Labor Management Railroad Retirement Negotiating Committee (Joint Committee) which took two years to submit its detailed study. *Fritz, supra*, at 169-170 n.3., 190-191 (dissent). (c) Finally, after a bill was submitted to Congress "the relevant committees held lengthy hearings and submitted detailed Reports". *Fritz, supra*, at 169-170 n.3, 191 (dissent).

Contrast the intense factfinding in *Fritz* with the utter absence of factfinding in the instant case. While Congress intended to deny VA compensation to military retirees in 1890 and 1891, Congress failed to address this denial when it enacted subsequent retirement legislation which permitted every disabled federal employee, except the plaintiffs, to receive both VA compensation and retired pay. The Federal Circuit opinion does not cite any congressional consideration of the inequity between petitioners and all other federal employees—for good reason. Congress never considered the matter—never articulated any reasons for this discrimination—and thus the Federal Circuit's analysis can go no further.

Second. The insolvency of the railroad retirement system in *Fritz* resulted from the payment of dual benefits. *Fritz, supra*, at 169 n.2. The elimination of dual benefits was a transitional matter (*Fritz, supra*, at 171 n.5), and some line had to be drawn "between groups of employees for the purpose of phasing out those benefits." *Fritz, supra*, at 177, 179. *Fritz* held that "the class for whom the Railroad Retirement Act was designed . . . had a greater equitable claim to [the dual] benefits

than the members of [plaintiffs'] class" *Fritz, supra*, at 178. Again, in the instant case Congress did not consider the equities of requiring petitioners to waive and not requiring all other federal employees to waive. Congress simply did not wrestle with "these complicated comparisons." *Fritz, supra*, at 173.

Third. Justice Stevens, concurring in the *Fritz* judgment, stated that if "the adverse impact may reasonably be viewed as an acceptable cost of achieving a larger goal, an impartial lawmaker could rationally decide that the costs should be incurred." *Fritz, supra*, at 181. In the instant case, however, there is a complete absence of weighing these costs; there is no record on which "an impartial lawmaker could rationally" make a decision. There is only congressional silence.

B. Congress has never considered the classification scheme which singled out petitioners for the waiver requirement.

The waiver provisions for career disabled veterans were enacted at different times and in different eras from those in which other federal retirement programs were promulgated. Perhaps this explains why Congress has never considered the classification scheme, but it does not satisfy the constitutional requirements of equal protection principles.³³

This Court has spoken on such congressional silence. In *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973), this Court stated that a challenged classification will pass muster under "rational basis" scrutiny only if it "rationally furthers some legitimate, *articulated* . . . purpose." (Emphasis added).³⁴

³³ If "it is arbitrary in effect" it is "none the less [so] because it . . . was due to inadvertence rather than design." *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

³⁴ At the heart of this line of cases is the premise that "[t]he requirement of equal protection, as the Supreme Court has devel-

In *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976), this Court stated that a classification will be sustained only if it "rationally furthers the purpose *identified* by the State." (Emphasis added.) Moreover, in *Johnson v. Robison*, 415 U.S. 361, 381-82 (1974), this Court upheld a classification on the finding that "[t]hese quantitative and qualitative distinctions, *expressly recognized* by Congress [in the legislative history], form a rational basis for Congress' classification" (Emphasis added.) Further, in *McGinnis v. Royster*, 410 U.S. 263, 270 (1973) (emphasis added), this Court stressed that its inquiry was "whether the challenged distinction rationally furthers some legitimate, *articulated* state purpose", and that it "supplied no imaginary basis or purpose for [the] statutory scheme." *Id.* at 277. Finally, in *Schweiker v. Wilson*, 450 U.S. 221, 235 (1981), this Court emphasized that the particular classification before it represented "Congress' deliberate, considered choice."³⁵ Here, in sharp contrast, there was no congressional consideration of the classification scheme which singled out petitioners for the waiver requirement.

Puglisi, the only other support cited by the Federal Circuit, is likewise distinguishable. The Court of Claims carefully analyzed the "long history" of the Dual Compensation Act. *Puglisi, supra*, at 405-07, 408-10. This legislative history spanned the period from 1839 to 1964, and reflected congressional analysis of the different treatment accorded retired regular officers and retired reserve officers. Drawing from this extensive legislative background, the Court of Claims identified two distinct,

oped it, focuses on the intent of decisionmakers." Harper & Lupu, *Fair Representation as Equal Protection*, 98 Harv. L. Rev. 1211, 1230 (1985). Congressional silence, of course, negates intent.

³⁵ There is a contrary line of cases. See, e.g., *Fritz, supra*, at 179 (" . . . this Court has never insisted that a legislative body articulate its reasons for enacting a statute") (dictum).

rational bases for the more lenient treatment of retired reserve officers for dual compensation purposes. *Id.* at 410. The Court of Claims concluded that Congress had made a reasoned decision, and thus satisfied the "rational basis" standard. *Id.* In the instant case, however, Congress has not articulated *any* reasons to justify the unequal treatment of career disabled veterans. *Puglisi* is thus distinguishable. Put another way, Congress never considered the issue posed by this case. Sections 3104 and 3105 simply cannot pass constitutional muster.

The courts below also ignored several important points.

1. Congress is uniquely equipped to deal with the asserted cost flowing from a successful result for petitioners in this case. The legislature can implement any number of changes to make a favorable decision *completely* revenue neutral by decreasing the benefits of other retirement programs slightly to make up for the cost of equalizing the one at bar with them. Thus, a decision by this Court in favor of petitioners need not cost a substantial sum of money. The issue of whether a revenue neutral alternative vitiates a discrimination otherwise justified on grounds of fiscal savings is, to counsel's knowledge, one of first impression in this Court.

2. Further, the amount of money involved is far from clear. Assuming a favorable decision for the petitioners, and further assuming that this decision would be applied to all 277,000 eligible retirees (App. at 17a),³⁶ the cost is "now estimated by the government at more than two billion dollars per year." App. at 3a, 15a n*. The Congressional Budget Office, however, estimates the cost to be much less, "approximately \$1 billion per year." App. at 17a. From this estimate of one billion dollars per year must be subtracted the federal income tax which

³⁶ It is by no means clear that the government would voluntarily, *sua sponte*, apply a favorable decision to the 275,000 *non*-plaintiffs. This, however, is a basic premise to the government's calculations.

would be paid on such income. In sum, there is a substantial difference between the estimate the Department of Justice furnished the lower courts and the Congressional Budget Office estimate—a one billion dollar difference. Money, however, is only one aspect of this case—the basic question remains whether the statutes at issue violate equal protection.

3. The Federal Circuit rationalizes the inequity in this case by stating that “[f]or nearly a century Congress” (App. at 5a) “has not changed its view that [this] legislation represents sound fiscal policy.” App. at 3a. The issue is not so easily resolved. This is not a fiscal line-drawing case where Congress must make a division at some point along an admittedly rationally conceived continuum. Here, Congress has isolated a particular class of retirees on the basis of an unarticulated distinction that is utterly irrelevant to any actual or legitimate governmental purpose. Indeed, Congress’ singling out the plaintiffs may be an oversight or mistake—the very reason why the Equal Protection Clause was inserted to protect individuals’ rights.

This system is patently arbitrary and irrational: tens of thousands of defendant’s disabled retirees are not required to waive;³⁷ and only the plaintiffs (and other similarly disabled military retirees) are singled out for waiver. “Under rational-basis scrutiny, legislative classifications are of course allowed some play in the joints. But the choice of a proxy criterion . . . cannot be so casual as this, particularly when a more precise and direct classification is easily drawn.” *Williams v. Vermont*, 105 S.Ct. 2465, 2472 n.8 (1985). While an exception “here and there”³⁸ might be acceptable, it is surely unacceptable when many thousands of retirees

³⁷ App. at 9a.

³⁸ *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 42 (1928) (Holmes, J., dissenting).

are affected. Courts are not obliged to defer to the legislature when it can be said, as here, that the legislature's decision is "very wide of any reasonable mark." *Schweiker v. Wilson*, 450 U.S. 221, 239 n.23 (1981).

4. Finally, the Federal Circuit's opinion notes that "[t]he provision for optional waiver of taxable retirement pay in favor of tax exempt disability compensation has to some extent ameliorated any conceived hardship" on petitioners. App. at 3a. This attempt to use the tax-exempt nature of VA compensation as justification for the waiver requirement should be rejected. Personal injury awards are traditionally tax-exempt; that VA compensation (for personal injury) is likewise tax-exempt is wholly unremarkable. The real economic facts of military retirement, ignored by the Federal Circuit, follow.

As a recent study found, "The annual retired pay for two-thirds of enlisted nondisability retirees is below the poverty level for a family of four (\$9860).³⁹ There is a "common misconception . . . that military can retire at half pay after 20 years. Military retired pay is based on basic pay, which is only about 70% of the equivalent of military salary. Consequently, retirement pay for a Technical Sergeant after 20 years of service is 35% of final basic pay." *Id.* To put the economic facts in perspective, active duty "military base pay for all personnel averaged \$13,400 in 1984." *Walters v. Nat'l Ass'n of Radiation Survivors*, 105 S.Ct. 3180, 3210 n.4 (1985) (Stevens, J., dissenting) (citation omitted).

Accordingly, "the vast majority of retirees work after retirement and stay in the civilian labor force until they reach the age at which civilians retire. . . . 94 percent of the officers and enlisted members who retired with 20 to 24 years of service were either working, looking for

³⁹ Department of the Air Force Memorandum, dated September 26, 1983, Subject: "Retirement Facts".

work, or going to school full time.”⁴⁰ And it is far more difficult, or even impossible, for the plaintiffs to secure civilian employment because each of them is disabled. This, of course, is the *raison d’etre* of disability compensation. It is respectfully urged that, contrary to the Federal Circuit, this is not “the type of balance Congress is entitled to strike.”⁴¹ App. at 4a. This case is, therefore, of constitutional dimension.

CONCLUSION

The ideal of equality expresses the basic aspirations of our form of government. Equal justice under law serves as an indirect guardian of virtually all constitutional values, and permits our form of government to function effectively over time. The Fifth and Fourteenth Amendments reduce the societal pressures which would otherwise result from unequal treatment. The norm of equality has tangible content only if it imposes significant constraints upon the substantive choices that political majorities and their representatives might be inclined to make. It is fundamentally unfair to have a large group—indistinguishable from other federal employees—being treated differently. The Equal Protection Clause is designed to correct the constitutional infirmity present in this case.⁴²

⁴⁰ Congressional Research Service, Senate Comm. on the Budget, “Financing Work-Related Entitlement Programs,” 98th Cong., 1st Sess. 366 (Comm. Print 1983) (citation omitted).

⁴¹ That the relevant statutes in this case represent a political decision by Congress does not, in itself, justify these statutes. “[T]he equal protection clause has always been understood as a requirement of justification for classifications, and that requirement is directed above all at decisions based solely on political power.” Sunstein, *Interest Groups in American Public Law*, 38 Stan. L. Rev. 29, 78 (1985).

⁴² See generally, L. Tribe, *American Constitutional Law* § 16-1, at 991 (1978).

For the foregoing reasons, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

Of Counsel:

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Attorneys for Petitioners

* Counsel of Record

February 1987

APPENDICES

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Appeal No. 86-885

CHARLES ROGER ABSHER, *et al.*,
Appellants,

v.

THE UNITED STATES,
Appellee.

Appealed from U.S. Claims Court
JUDGE MARGOLIS

Decided: November 14, 1986

Jeffrey M. Glosser, of Washington, D.C., argued for appellant. With him on the brief was *Robert A. Burka*.

Stephen J. McHale, Commercial Litigation Branch, Department of Justice, of Washington, D.C., argued for appellee. With him on the brief were *Richard K. Willard*, Assistant Attorney General and *David M. Cohen*, Director.

Before SMITH, *Circuit Judge*, BENNETT, *Senior Circuit Judge*, and NEWMAN, *Circuit Judge*.

PER CURIAM.

DECISION

This is an appeal from a decision of the United States Claims Court (Margolis, J.) granting defendant's motion for summary judgment and denying plaintiff's cross-motion for summary judgment. 9 Cl. Ct. 223 (1985). We affirm.

BACKGROUND

Plaintiffs-appellants are 2,048 disabled military retirees entitled to receive longevity retired pay and who also qualify for disability compensation from the Veterans Administration (VA). However, pursuant to 38 U.S.C. §§ 3104-3105 (1982) they are precluded from receiving both at the same time. Rather, each is required to waive retired pay equal in amount to any VA compensation received. Absent such a waiver they cannot receive VA disability benefits.

Appellants brought an equal protection challenge to the constitutionality of the above statutes under the due process clause of the fifth amendment. In rejecting the challenge, the Claims Court held that the special benefits accorded to retirees of the uniformed services (commisary, post exchange, recreational, travel, health, and eligibility to retire after only 20 years of service, regardless of age, without making financial contributions to a retirement fund) are such that this class of individuals, is not situated similarly to other groups that are or are not required to waive retirement pay to receive tax-free VA benefits. It also held that the statutory scheme effected a legitimate governmental purpose in a rational way by limiting the amount of compensation appellants receive. The question on appeal is whether these conclusions are errors of law and the statutory scheme constitutes constitutionally improper discrimination against disabled military retirees. Appellants have sought the amount of back pay they did not receive during the 6 years preceding the filing of their complaints as a result of the prohibition on dual benefits and the waiver requirement.

OPINION

The Claims Court carefully reviewed the legislative history of the challenged statute and found that the prohibition against dual compensation for military retirees goes back to 1891, Act of March 3, 1891, ch. 548, 26 Stat. 1082, although the waiver provision first appears in the statutes in 1944. Act of May 27, 1944, ch. 209, 58 Stat. 231. The stated congressional purpose was to save money, now estimated by the government at more than two billion dollars per year. Although Congress has many times considered further amendments to the statute, it has not changed its view that the basic legislation represents sound fiscal policy. The provision for optional waiver of taxable retirement pay in favor of tax exempt disability compensation has to some extent ameliorated any conceived hardship on those subject to the statute. A waiver provision is not unique to appellants. We see it in reference to civilian service with the government. A military retiree, except for those with combat injuries, is required to waive all of his retired pay if he wishes to have his years of uniform service counted with his civilian service in the calculation of a civil service annuity. 5 U.S.C. § 8332(c) (2) (1982); 5 C.F.R. § 831.301 (c) (1982); see *Bailey v. United States*, 511 F.2d 540 (Ct. Cl. 1975). Cf. *Appel v. Office of Personnel Management*, 777 F.2d 691 (Fed. Cir. 1985) (civil service disability annuity suspended while workers' compensation was being received from the Department of Labor).

Appellants recognize that it is their burden to overcome the presumption of constitutionality by identifying a similarly situated group and then to demonstrate that they are being treated disparately and that the statute manifests a patently arbitrary classification utterly lacking in rational justification. They have not been able to do this. It is hard to imagine a more rational basis for congressional action than fiscal restraint. It has long been held proper for Congress to place a ceiling on the

total compensation which an individual can receive from the government. In doing so the action of Congress in singling out certain classes of persons against whom to apply the restriction has had judicial approval against equal protection challenges. *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980); *Puglisi v. United States*, 564 F.2d 403 (Ct. Cl. 1977).

In their brief appellants have argued both that they are similarly situated with all other federal retirees and that, due to the nature of military employment, they have historically been accorded preferential treatment. At oral argument their counsel somewhat reconciled these positions by conceding that there are apparent differences in the classes of employment sought to be compared to appellants but that those differences are not wide. The Claims Court, of course, took the position that "[t]he special benefits accorded retirees of the uniformed services are such that this class of individuals is not situated similarly to other groups that are not required to waive retirement pay to receive tax-free VA benefits." 9 Cl. Ct. at 227. That court also determined that under 38 U.S.C. § 3104 (1982) retired pay is full compensation for a military retiree's service to the nation but that it permits those retirees to receive the financial benefit of tax-exempt disability pensions through the waiver provisions of section 3105. This is the type of balance Congress is entitled to strike. We do not therefore discern error in the legal conclusion of the Claims Court.

Appellants, however, contend that Congress did not act in a constitutional manner here because it did not have a rational basis for the classification distinction it has drawn against appellants. Therefore, we are invited to declare unconstitutional its acts set forth in sections 3104-3105. In a scholarly brief appellants contend that the Claims Court was mistaken by invoking the rational basis test of *Railroad Retirement Board v. Fritz*, 449 U.S. 166, and overlooking the alleged trend back to *F.S.*

Royster Guano Co. v. Virginia, 253 U.S. 412, 416 (1920). The latter case held that any legislative classification required a demonstrably fair and substantial relation to its legislative objective in order to pass Supreme Court scrutiny. In other words, although a classification may be rational in a literal sense, the Court can still find that it does not have a fair and substantial relation to the object of the law. Attention is invited to recent Supreme Court cases which follow *Guano* and we are admonished to take note of differences therein between members of the Supreme Court who have expressed divergent views about the degree of deference properly afforded the legislature when equal protection issues are at stake.

The host of cases relied on by appellants do not undermine the decision of the Claims Court. They do demonstrate, under varying factual contexts, that it is sometimes most difficult to apply equal protection and that a rigid standard does not guarantee such protection when applied mechanically. We do not think that any such difficulty exists in the present case. Under the line of cases relied on by the government and by the Claims Court, and under the line relied on by the appellants, the result must be the same here. For nearly a century Congress has held to the consistent view that there was no entitlement to both retired pay and a disability pension for the same period of military service. For over 40 years it has allowed retirees to elect which benefit they wish to accept, through exercise of the waiver provisions of 38 U.S.C. § 3105. The balance it has thus struck is not only rational, it also bears a demonstrably fair and substantial relation to legitimate legislative objectives and does so without denying equal protection. See *First National Bank of Oregon v. United States*, 571 Ct. Cl. 21, 23 (1978).

Affirmed

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APPENDIX B

IN THE UNITED STATES CLAIMS COURT

(Filed December 3, 1985)

No. 494-84C

CHARLES ROGER ABSHER, *et al.*

v.

THE UNITED STATES

No. 62-85C

LLOYD W. ABBOTT, *et al.*

v.

THE UNITED STATES

No. 257-85C

DONALD E. BAKER, *et al.*

v.

THE UNITED STATES

No. 441-85C

OSVALDO ALVARADO, *et al.*

v.

THE UNITED STATES

No. 582-85C

JIMMIE R. ARMSTRONG, *et al.*

v.

THE UNITED STATES

Veterans benefits; prohibition against dual compensation;
38 U.S.C. §§ 3104-05; equal protection;
Fifth Amendment

Jeffrey M. Glosser, Washington, D.C., attorney for the plaintiffs.

Stephen J. McHale, Washington, D.C., with whom was Assistant Attorney General *Richard K. Willard*, for the defendant.

OPINION

MARGOLIS, *Judge*.

The plaintiffs are disabled veterans retired from the uniformed services of the United States who challenge the constitutionality of a statute requiring that at least a portion of their longevity retirement pay be waived if they are to receive a disability pension. The plaintiffs claim the statute violates the equal protection component of the due process clause of the Fifth Amendment in that waiver of retirement benefits is not required of other, similarly situated, federal retirees; plaintiffs seek to recoup the monies they were required to waive during the six years preceding the filing of their complaints in these consolidated cases. Further, the plaintiffs challenge the constitutionality of another statute barring dual compensation for retired disabled veterans.

The defendant United States seeks to uphold the constitutionality of the statutes on the ground that the statutes effectuate a legitimate governmental purpose in a rational way.

Jurisdiction of this Court is founded on 28 U.S.C. § 1491 (1982). Both parties have moved for summary judgment. Since the parties agree that the material issues of fact are not in dispute, summary judgment is appropriate. The Court holds for the defendant.

FACTS

Plaintiffs are retired members of the uniformed services as defined by 10 U.S.C. § 1407(2) (1982):

(2) . . . "uniformed service" means—

(A) any of the armed forces;

(B) the commissioned corps of the Public Health Service; or

(C) the commissioned corps of the National Oceanic and Atmospheric Administration.

As retirees, they are entitled to receive retirement pay based on the longevity of their employment. Retirement pay thus received is taxed as ordinary income. As disabled veterans, plaintiffs also qualify for disability pensions or compensation under the laws administered by the Veterans' Administration ["VA benefits"]. These VA benefits are exempt from taxation.

By statute, retirees of the uniformed services are precluded from receiving both their full retirement pay and VA benefits. 38 U.S.C. § 3104 (1982). Such retirees are required to waive a portion of their retirement pay equal to any VA benefits they receive:

Any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commis-

sioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans' Administration if he were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of his retired or retirement pay as is equal in amount to such pension or compensation.

38 U.S.C. § 3105. Absent such a waiver, no VA benefits can be paid lawfully.

Other federal retirees who qualify for VA compensation are not required to waive a portion of their retirement pay to receive VA benefits. Federal employees retiring from the Civil Service in the executive, legislative and judicial branches of government; certain foreign service retirees of the Department of State; and certain retirees of the Central Intelligence Agency can receive both full retirement pay and full VA compensation.

The plaintiffs allege that this disparate treatment among federal retirees violates their right to equal protection under the Fifth Amendment to the U.S. Constitution.

DISCUSSION

A. *HISTORY OF THE DUAL BENEFITS PROHIBITION*

Disability pensions have been provided to veterans since the Revolutionary War. Generally, a veteran is entitled to a pension for any disability resulting from a service-connected or service-aggravated injury. The amount of the pension depends on the degree to which the individual is disabled. The purpose of the benefits is two-fold—to compensate the veteran for physical losses,

pain and anxiety and to compensate the veteran for the earning impairment caused by the disability. *See* H. Con. Res. 69, 99th Cong., 1st Sess, p. 2 (Feb. 26, 1985).

Retirement pay was first authorized by Congress during the Civil War in 1861. Army, Navy and Marine Corps officers with more than 40 years of service could apply to the President to retire them with pay; there were also provisions for involuntary retirement. Act of August 3, 1861, ch. 42, 12 Stat. 289, 290. As the Supreme Court explained:

The impetus for this legislation was the need to encourage or force the retirement of officers who were not fit for wartime duty. Thus, from its inception, the military nondisability retirement system has been "as much a personnel management tool as an income maintenance method,"; the system was and is designed not only to provide for retired officers, but also to ensure a "young and vigorous" military force, to create an orderly pattern of promotion, and to serve as a recruiting and re-enlistment inducement.

McCarthy v. McCarthy, 453 U.S. 210, 212-13 (1981) (footnotes and citations omitted).

As early as 1890, Congress became concerned with the increasing drain of retirement pay and disability pensions on the public treasury. In 1890 and again in 1891 Congress prohibited the payment of what it regarded as "dual compensation":

That hereafter no [disability] pension shall be allowed or paid to any officer, non commissioned officer, or private in the Army, Navy or Marine Corps of the United States, either on the active or retired list.

Act of March 3, 1891, ch. 548, 26 Stat. 1082.

The legislative history demonstrates that Congress intended the active and retired pay of members of the

armed services to be compensation in full and that such members were not allowed, in addition, to receive pensions by reason of disability arising from the same service. *See* 21 Cong. Rec. 8507-08 (1890); *see also* 22 Cong. Rec. 2191-92 (1891). Since that time Congress has incorporated the same or similar language in succeeding pension acts. *See, e.g.*, Act of July 27, 1892, ch. 277, 27 Stat. 282; Act of May 9, 1900, ch. 385, 31 Stat. 171; Act of Feb. 6, 1907, ch. 468, 34 Stat. 879; Act of May 11, 1912, ch. 123, 37 Stat. 113; Act of June 5, 1920, ch. 245, 41 Stat. 982; Act of June 7, 1924, ch. 320, 43 Stat. 623.

It was not until 50 years later in 1941 that Congress eased the prohibition against receipt of both retired pay and disability pensions. Under the Act of June 30, 1941, Pub. L. No. 77-140, 55 Stat. 395, certain enlisted men were given the right to choose between receipt of either retired pay or disability pensions. Then, in 1944, Congress established the present system which applies to all members of the uniformed services. Retirees are no longer required to choose between retired pay or disability benefits; instead retirees are allowed to waive as much of their retirement pay as they are eligible to receive in VA disability benefits. 38 U.S.C. 3105 (originally enacted as the Act of May 27, 1944, Pub. L. No. 78-314, 58 Stat. 230). Since disability benefits are tax exempt, retirees receive more after-tax income when they waive retirement pay in favor of VA benefits.

B. *STANDARD OF REVIEW IN EQUAL PROTECTION CASES UNDER THE FIFTH AMENDMENT*

Inasmuch as the legislative classification here does not impermissibly interfere with a fundamental right or operate to the peculiar disadvantage of a traditionally suspect classification such as race, religion or alienage, the plaintiffs concede that "strict judicial scrutiny" is not

appropriate. See *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 312-14 (1976).

Under the U.S. Supreme Court's prevailing formulation, socio-economic legislation such as 35 U.S.C. §§ 3104-05 is examined to see if the legislation advances some legitimate governmental purpose in a rational way. *U.S. Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980). Thus, there are two inquiries to be made:

- 1) Does the statute seek to achieve some purpose Congress may legitimately advance, and
- 2) Given the purpose, was there some rational basis for designating those chosen to be affected by the legislation?

If the purpose is legitimate and some rational basis exists for specifying the particular class designated to be affected by the legislation, this Court's inquiry ends and the statute must be upheld. *U.S. Railroad Retirement Board v. Fritz*, 449 U.S. at 179. Legislation also carries with it a presumption of constitutionality that can be overcome only by a showing that Congress was arbitrary and irrational. *Duke Power Co. v. Carolina Environmental Supply Group, Inc.*, 438 U.S. 59, 83-84 (1978).

C. APPLICATION OF THE STANDARD OF REVIEW TO THE STATUTES

Given the legislative history of 38 U.S.C. §§ 3104-05, it is clear that one purpose of these statutes was to restrain spending. Few purposes are so clearly a legitimate congressional objective.

Another purpose of the statutes was to limit the amount of compensation certain classes of individuals could receive as a result of military or uniformed service. As the U.S. Court of Claims noted, placing "a ceiling on the amount of compensation certain classes of individuals can receive from the federal government . . . is, of course, a proper object of congressional con-

cern.” *Puglisi v. United States*, 215 Ct. Cl. 86, 95, 564 F.2d 403, 409 (1977).

In 1891, Congress clearly stated its intention that military retirees should receive only retired pay as full compensation for their services:

It has always been understood that, when an officer was placed upon the retired list and received three-fourths of his pay, that was in lieu of compensation for all services performed in the Army, and in lieu of a pension. . . . When the Mexican [War] pension bill was passed . . . the first thing we knew there were one hundred and fifty-six officers upon the retired list of the Army drawing pensions. . . . This amendment is simply to carry out what we started at the last session—which has always been the understanding of Congress—that officers on the active and retired lists should not draw any pensions.

22 Cong. Rec. 2191 (1891).

The congressional debates also evince a concern with the rising cost of pensions and a belief that dual compensation was excessive and improper. 21 Cong. Rec. 8507-08 (1890); 22 Cong. Rec. 2181-92 (1891).

The subject of the legislation is directed towards a legitimate governmental purpose, and thus the first inquiry mandated under the “rational basis” test is satisfied. As to whether or not the legislation carries out this legitimate purpose in some rational manner, the Court must look to the plaintiffs’ class and determine if there is some basis for treating this class differently from others.

As retirees of the uniformed services, plaintiffs are entitled to commissary, recreational, travel and health benefits in addition to their retired pay. *See, e.g.*, Army Regs. 40-3, ¶ 4-11 (Feb. 15, 1985) (medical services); 60-20, ¶ 2-9 (Aug. 1, 1984) (exchange privileges); 30-

19, App. B (October 15, 1982) (commissary privileges); 215-2, ch. 2 (August 26, 1985) (package stores; recreational privileges; morale support activities). Such benefits are not generally available to disabled veterans retired under other public or private retirement programs. Unlike other retirement programs, the uniformed services has no minimum retirement age; members can retire after twenty years service regardless of their age. See 10 U.S.C. § 3911 (1982). The average age of regular enlisted personnel at retirement is 42, and regular officers on average retire at age 46. Office of the Actuary, Defense Manpower Data Center, *FY 1983 Department of Defense Statistical Report on the Military Retirement System*, 91 (1984). As such, uniformed service retirees are likely to receive benefits for longer periods of time than are other retirees.

Given these facts and the preferential treatment deservedly provided retirees of the uniformed services, Congress may well have decided that prohibiting this class from receiving both disability pensions and retirement pay was warranted. The special benefits accorded retirees of the uniformed services are such that this class of individuals is not situated similarly to other groups that are not required to waive retirement pay to receive tax-free VA benefits. To the extent that the plaintiffs and other federal retirees are similarly situated, there is a rational basis for limiting the amount of compensation the plaintiffs receive.

Congress has considered amending 38 U.S.C. §§ 3104-05 numerous times. See, e.g., H.R. 867, 99th Cong., 1st Sess. (1985); H.R. 1366, 99th Cong., 1st Sess. (1985); H.R. 468, 98th Cong., 1st Sess. (1983); H.R. 325, 98th Cong., 1st Sess. (1983); S. 783, 97th Cong., 1st Sess. (1981); H.R. 517, 97th Cong., 1st Sess. (1981); H.R. 2141, 97th Cong., 1st Sess. (1981); S. 1907, 96th Cong., 1st Sess. (1979); H.R. 823, 96th Cong., 1st Sess. (1979); H.R. 722, 95th Cong., 1st Sess. (1977); H.R.

1165, 94th Cong., 1st Sess. (1975). Apparently, Congress is still satisfied that this legislation represents sound fiscal policy.*

Congress may view the option that taxable retirement pay be waived in favor of tax exempt disability compensation as ameliorating any hardship inflicted on those subject to the statutes. Congress has reiterated its intention that disability benefits remain tax exempt. H. Con. Res. 69, 99th Cong., 1st Sess. p. 2 (Feb. 26, 1985); S. Con. Res. 20, 99th Cong., 1st Sess. p. 2 (Feb. 26, 1985).

The Court finds that the class identified in the challenged legislation is rationally related to the purposes advanced. Thus, the statutes do not violate the equal protection component of the Fifth Amendment.

If plaintiffs believe they are not adequately compensated and wish to have their compensation package reviewed, the proper forum for such review is Congress, not this Court.

CONCLUSION

The Court finds the legislation constitutionally permissible. For the reasons discussed, the plaintiffs' motion for summary judgment is denied, and the defendant's motion for summary judgment is granted.

The Clerk will dismiss the complaints.

/s/ Lawrence S. Margolis
LAWRENCE S. MARGOLIS
Judge, U.S. Claims Court

December 3, 1985

* In an affidavit, the government stated that the waiver requirement saves the Air Force nearly 590 million dollars per year. During oral argument, the government estimated savings for all uniformed services at more than two billion dollars per year.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Appeal No. 86-885

CHARLES ROGER ABSHER, *et al.*,
Appellants,

v.

THE UNITED STATES,
Appellee.

JUDGMENT

On Appeal from the United States Claims Court
in Case No(s). 494-84C; 62-85C; 257-85C;
441-85C; 582-85C

This CAUSE having been heard and considered, it is
ORDERED and ADJUDGED:

Affirmed.

Dated Nov. 14, 1986

ENTERED BY ORDER OF THE COURT

/s/ Francis X. Gindhart
FRANCIS X. GINDHART, Clerk

Issued as a Mandate: December 5, 1986

Costs against the Appellant:

Printing \$51.68
TOTAL \$51.68

APPENDIX D

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

August 12, 1985

Honorable Michael Bilirakis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman:

This letter is in response to your request of July 30, 1985 for aid in developing a cost estimate for H.R. 867. This legislation would permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay, with no deduction from either. CBO estimates that this bill would increase net Federal outlays by approximately \$1 billion per year, and that the budgets of state and local governments would not be directly affected by enactment of this bill.

Under current law, servicemembers who retire with at least 20 years of service and who have some service-related disability are not permitted to receive a full retirement annuity from the Department of Defense (DoD) in addition to disability compensation from the Veterans Administration (VA). They must waive either their entire disability compensation benefit or a portion of their military retirement equal to the amount of disability compensation benefit they receive.

According to DoD actuaries, there are currently about 277,000 retirees with at least 20 years of service who have waived all or part of their military retirement in order to receive disability compensation benefits. The

total value in 1985 of the retirement benefits that are being waived is over \$800 million. This total was increased in future years by 3.5 percent a year to reflect the historical rate of growth in the number of veterans waiving all or a portion of their military retirement benefits. Outyear costs were also increased for anticipated cost-of-living adjustments. Under the accrual accounting system, this bill would increase outlays from the military retirement trust fund in income security (budget function 600 by an average of over \$1 billion each year from 1986 to 1990. The budget authority in the fund (the multiplication of military personnel basic pay and the actuarial normal cost percentage), which is derived from payments from the national defense function (budget function 050), would increase by a similar amount. Due to the complexity of calculation, our estimate of the net budget impact does not include the small change in the amount of interest earned by the trust fund.

The cost in the veterans benefits and services function (function 700) is estimated to be approximately \$20 million in each of the next five years. Neither DoD nor the VA has any information regarding those veterans who have waived their disability compensation benefits in order to receive the full amount of their military retirement. However, since disability compensation benefits are not taxable, it is expected that the number of veterans who forgo these benefits in favor of taxable military retirement benefits is not large. This estimate assumes that the number of veterans waiving compensation benefits is equal to 10 percent of the veterans who receive compensation for disabilities rated less than 30 percent disabling and who waive some portion of their retirement benefits. The cost in budget function 700 was estimated using a weighted average of compensation benefits payable to these veterans.

I hope this information is helpful. If you have any further questions regarding this estimate, please feel free

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to call me or have a member of your staff contact Barbara Hollinshead (226-2840) or Kathleen Shepherd (226-2820).

With best wishes,

Sincerely,

/s/ Rudy Penner
RUDOLPH G. PENNER
Director

APPENDIX E

LIST OF PARTIES

Charles Roger Absher, et al. v. United States,
United States Claims Court, No. 494-84C

Charles Roger Absher (1)	Stanley J. Ashmus, Jr. (43)
Lawrence E. Abshire, Sr. (2)	Harry P. Asloglou (44)
Thomas M. Acree (3)	Douglas Charles Atchison (45)
Benjamin Warren Adams (4)	Lon E. Aucker (46)
Jack W. Adams (5)	Donald H. Augustson (47)
James E. Adams, Jr. (6)	David Lee Austin (48)
Robert F. Adams (7)	Jack Everett Averill (49)
Roy C. Adams (8)	Chester J. Ayme (50)
Ernest Akam, Jr. (9)	Donald L. Baase, Sr. (51)
Sammy Albanese (10)	Horatio Ivan Babcock (52)
Gerald R. Albert (11)	Frank C. Baca (53)
Sylvester Alexander (12)	Manuel Perea Baca (54)
Leonard W. Alldredge, Jr. (13)	James J. Bachand (55)
Andrew J. Allen (14)	Willie R. Bacy (56)
Daniel L. Allen (15)	Billy Charles Bailey (57)
Robert E. Allinger, Jr. (16)	Edward R. Bailey (58)
Kenneth John Altherr, Sr. (17)	Robert H. Baine (59)
Felscia Letherian Altman (18)	John E. Bair (60)
Frank G. Alvau (19)	Doric William J. Ball (61)
Raymond L. Amerson (20)	Dallas J. Banghart (62)
William F. Ames (21)	John Russell Banks, Sr. (63)
Donald R. Ammerman (22)	Robert R. Baray (64)
Maurice A. Ammon (23)	Charles Judson Barnes, Jr. (65)
Richard A. Ammons (24)	Gordon R. Barnett (66)
Roby L. Amos (25)	Emory L. Barney (67)
Charles W. Anderson (26)	Fred L. Barnhart (68)
James H. Anderson (27)	Thomas T. Baron (69)
Myron C. Anderson, Sr. (28)	Louis A. Barre, III (70)
Richard L. Anderson (29)	Albert Henry Barrett (71)
Frank J. Andrzejczyk (30)	Boyd Barrett (72)
Clemens W. Apitz (31)	Earl Edward Barrett (73)
Harvey B. Apperson, Jr. (32)	John A. Barrett (74)
William V. Arbacas (33)	Floyd W. Bartlett (75)
Lamberto Patricio Armijo (34)	Arthur P. Bartol (76)
Bobby J. Arms (35)	John Barton, Jr. (77)
Arthur M. Armstrong (36)	Kenneth L. Bassham (78)
Michael R. Armstrong (37)	Richard Ray Bates (79)
Robert Armstrong (38)	Gerhard F. Baumann (80)
Frank J. Arnold (39)	Norbert Lee Bausch (81)
John W. Arnold (40)	John B. Beach (82)
Robert M. Arnold (41)	Richard F. Beach (83)
George A. Ashbridge (42)	William Beach (84)

- Clarence L. Beacham (85)
 William S. Beasley (86)
 Robert B. Beaudoin (87)
 Marcel Leon Beauvais (88)
 Marion Charles Becker (89)
 Letha F. Beebe (90)
 executor of the estate of
 Nile J. Beebe
 John James Beenau (91)
 Ernest Francis Befort (92)
 Robert A. Begg (93)
 Ralph H. Belcher (94)
 Clarence W. Bell (95)
 Norman E. Bell (96)
 Paul E. Bell (97)
 James David Belton (98)
 Mortimer F. Bennet (99)
 Arthur W. Bennett (100)
 Ernest Benshimol, Jr. (101)
 Roger G. Berard (102)
 Francis E. Bergin (103)
 Jack C. Bergstresser (104)
 Clarence J. Berry (105)
 Cooley C. Berry (106)
 Kenneth Bickel (107)
 Harold H. Biggs (108)
 William G. Biggs (109)
 Clifton D. Biglow (110)
 Maynard Yocum Binge (111)
 John E. Binkley, Jr. (112)
 Kenneth E. Birk (113)
 Hans Bischofs (114)
 Gordon A. Bishop (115)
 Glenn A. Bittenbender (116)
 Raymond Phillip Bixler (117)
 Peter T.L. Black (118)
 Norman W. Blackwell (119)
 William Henry Blackwood (120)
 George Blahun (121)
 Maxie Leon Blair (122)
 Jack F. Blankenship (123)
 Mary Lucille Blaser (124)
 executrix of the estate of
 Frederick Blaser
 Jack Harry Blenis (125)
 William Riley Blush (126)
 Aaron Boaz, Jr. (127)
 Paul Jacob Bodenhofer (128)
 Dewie T. Bodiford (129)
 Donald E. Boger (130)
 Martin Walter Bohn (131)
 Ralph M. Boisvert (132)
 Thomas Bokoski (133)
 Willis Lee Bolich (134)
 Alfred P. Bollens (135)
 Anthony L. Bonamego (136)
 Lawson Glynn Bond (137)
 Vernon Ernest Bonds (138)
 James Clinton Bones, Sr. (139)
 Robert Roy Boob (140)
 Jesse Lee Boone (141)
 Albert Stephen Borchick, Jr.
 (142)
 Antone Borecky (143)
 Lloyd O. Borgen (144)
 Willie Bostic, Jr. (145)
 Ronald T. Botsko (146)
 Lawrence Vito Botta (147)
 Joseph J. Boublis (148)
 William A. Boucher (149)
 William Harry Bowers (150)
 Sammy George Bowman (151)
 James Preston Boyd, Jr. (152)
 William K. Boyd (153)
 Robert Seeley Boyle (154)
 Thomas Francis Boynan (155)
 June Victor Bradley (156)
 William J. Bradley, Jr. (157)
 William James Bradley, Jr. (158)
 Jack E. Brady (159)
 Henry R. Bragdon (160)
 Kenneth L. Brant (161)
 Merritt Gray Braun (162)
 Ronald W. Breault (163)
 Harrison Grover Breedlove (164)
 Carl H. Brewer (165)
 Karl Albert Bridge (166)
 Robert Henry Brightwell (167)
 James Rolf Briney III (168)
 Carl B. Brining (169)
 Harold L. Brock (170)
 Harvey W. Bronstein (171)
 Edward B. Brookins (172)
 Irwin Brooks (173)
 Charles V. Brookshire, Sr. (174)
 Charles Edward Brown (175)
 Chester Lee Brown (176)
 James A. Brown (177)

- John Edward Brown (178)
 Robert H. Brown (179)
 Theodore Brown (180)
 David L. Brundage (181)
 William Page Bryan (182)
 Alfred Buchalter (183)
 Kester W. Buchanan (184)
 Francis E. Buckley (185)
 Frank J. Budacki (186)
 Paul John Budrow (187)
 Charles H. Bullock (188)
 John W. Bundy (189)
 Charles Melvin Bunner (190)
 Talmage P. Buntin (191)
 Donald J. Burger (192)
 Richard F. Burke (193)
 Donald N. Burkheimer (194)
 Franklin R. Burnett (195)
 Paul Francis Burns (196)
 Raymond M. Burns (197)
 Lloyd Lester Burris (198)
 Billy B. Burson (199)
 Jewel T. Bush (200)
 Josephus Bush (201)
 Robert Lewis Butcher, Sr. (202)
 Frank Milton Butler (203)
 Daniel B. Byrd (204)
 Max Walter Cady (205)
 John Patrick Callahan (206)
 Charles E. Campbell (207)
 William B. Canning (208)
 J. Parry Cannon (209)
 Martin Cantor (210)
 John W. Capriotti (211)
 Henry Cardinal (212)
 Emil Carey, Jr. (213)
 Robert H. Carey (214)
 Martin Lewis Carle (215)
 John K. Carney (216)
 William M. Carney (217)
 William J. Caroscio (218)
 David C. Carpenter (219)
 John Hardy Carrington (220)
 Danford S. Carroll (221)
 James J. Carroll (222)
 James W. Carroll (223)
 William R. Carroll (224)
 Albert Thomas Carter (225)
 James P. Carter (226)
 John Thomas Carter (227)
 Paul D. Carter (228)
 Jesse Billy Cartright (229)
 Homer Franklin Cash (230)
 Jay Donovan Cason (231)
 Don H. Casto (232)
 James G. Cavan (233)
 Mylo R. Cayou (234)
 Harold Lee Chadwell (225)
 Robert V. Chandler (236)
 William R. Chandler (237)
 James Chase, Jr. (238)
 John L. Chassereau (239)
 Alan H. Chenevert (240)
 C.C. Chenoweth (241)
 Joseph Chicone (242)
 George M. Childress (243)
 Robert E. Chisolm (244)
 Adrian Threese Chisum (245)
 Frank A. Christoph (246)
 Joseph Chudy (247)
 Richard W. Churchill, Sr. (248)
 Bertram D. Clark (249)
 James T. Clark III (250)
 Merle Clark (251)
 Thomas A. Clark (252)
 John L. Clarke, Jr. (253)
 Nancy (Chimera) Clasen (254)
 James Clay (255)
 Carroll W. Clifford (256)
 Climuel H. Close (257)
 Charles H. Coates, Jr. (258)
 Edmund L. Cody (259)
 Clyde Burns Colley (260)
 Arthur Frank Collins (261)
 Jack David Collins (262)
 Ernest R. Combs (263)
 Harold Combs (264)
 Richard Leroy Combs (265)
 Donald George Compeau (266)
 Douglas B. Cone (267)
 Ernest K. Conley (268)
 John R. Connell (269)
 John W. Conner (270)
 Edward L. Cook (271)
 James Carson Cook (272)
 Robert Arquilla Cook (273)
 Walter Thomas Cook (274)
 Frederic C. Coolen (275)

Rexford M. Cooper (276)
 Robert W. Cooper (277)
 Ronald O. Cooper (278)
 Anna Corcoran (279)
 Paul H. Corley (280)
 Clyde L. Corneal (281)
 Donald W. Corrick, Jr. (282)
 James R. Costello (283)
 Patrick J. Cotter (284)
 George Richard Couch (285)
 Dwight W. Covell (286)
 Forest Cox (287)
 Ronald E. Cox (288)
 Billie Ray Creath (289)
 Arthur Delbert Creitz (290)
 William J. Crill (291)
 Donald M. Crips (292)
 John A. Cronin (293)
 Franklin D. Crosby (294)
 Willie J. Crosby (295)
 James Edwin Cross (296)
 Clarence E. Crossley (297)
 Sandy D. Crowder (298)
 Richard G. Crowell (299)
 James E. Crum (300)
 Gordon R. Cubbison (301)
 William M. Culin (302)
 Helen E. Cundiff (303)
 Lawrence Franklin Cunningham
 (304)
 Robert H. Cunningham (305)
 Raymond Luther Curry (306)
 Andrew J. Czeck (307)
 Guy A. Dail (308)
 G.W. Dalby (309)
 Donald F. Dalton (310)
 Ernest G. D'Angelo (311)
 Harold K. Daniel (312)
 George W. Daniels (313)
 Thomas W. Daniels (314)
 Jack C. Davenport (315)
 Harold C. Davis (316)
 James D. Davis, Jr. (317)
 Kenneth L. Davis (318)
 Ole C. Davis (319)
 Richard Kent Davis (320)
 Willard Frank Davis (321)
 George A. Dawson (322)
 Harry R. Dawson (323)

Lawrence A. Dearborn (324)
 Anthony J. DeBenedictis (325)
 Sylvester W. DeCarlo (326)
 Ignatius De Cicco (327)
 Arnold Francis Decker (328)
 Edward De Frias (329)
 Thomas De Mint (330)
 Raymond Max Demuth (331)
 James P. Denham (332)
 John M. DenHerder (333)
 Harold L. Denmon (334)
 Doyle V. Denney (335)
 Harry L. Dennis (336)
 Howell A. Dennis (337)
 Robert N. Denniston (338)
 Chester P. Dereng (339)
 James J. Derhaag (340)
 Harold J. Derosier (341)
 Brian H. Derrick (342)
 Laurin A. DeVine (343)
 Robert George DeVine (344)
 George W. Dick, Sr. (345)
 Joseph DiFrank, Jr. (346) -
 Sam Dimenza (347)
 Nicholas Anthony DiNardi, Sr.
 (348)
 Edwin L. Dispennette (349)
 Vernon G. Dixon (350)
 William E. Dixon (351)
 Darlene M. Dodd (352)
 George P. Dodd (353)
 William Doerrerr (354)
 Patrick J. Doherty (355)
 Gene R. Dollarhide (356)
 Gerald L. Dolph (357)
 William F. Donahue, Jr. (358)
 Jack Dempsey Donaldson (359)
 James B. Dougherty (360)
 Paul E. Downey (361)
 Delmer Doyle (362)
 Nathan A. Doyle (363)
 Harry T. Dragoo (364)
 Harold Francis Drew (365)
 Conrad J. Driscoll (366)
 David George Driver (367)
 Norman F. Drouin (368)
 Richard A. Duchette (369)
 Robert C. Dueppen (370)
 Robert A. Duncan (371)

- Thomas E. Dunklee (372)
 Fredrick Lewis Dunlevy (373)
 Joseph G. Dunn (374)
 Frank Duran, Sr. (375)
 Douglas W. Durland (376)
 Timothy G. Dyas (377)
 Richard B. Dyer (378)
 Robert D. Dzuck (379)
 Robert Omar Dzuck (380)
 Lindsay Gray Eakes (381)
 Benjamin F. Earley (382)
 Julian B. Earp (383)
 John J. Easton (384)
 Bruce L. Eberhart (385)
 Dale E. Ebersold (386)
 Lawrence J. Ebner (387)
 George S. Eckhardt (388)
 James Eddins, Jr. (389)
 James R. Eddy (390)
 James W. Edgell (391)
 Joe Ronald Edwards (392)
 Francis Edward Egan (393)
 Marvin A. Eggers (394)
 Mary M. Eggert (395)
 Walter A. Eggert (396)
 Robert F. Ekberg (397)
 William N. Eldridge, Jr. (398)
 William R. Elifrits (399)
 Harold Egan Elliott (400)
 Robert W. Elliott, Jr. (401)
 Raymond W. Ellsworth (402)
 Robert Edwin Elmwood (403)
 Curtis Elswick, Jr. (404)
 Charles E. Endsley (405)
 James F. Englehardt (406)
 Thomas W. Engley (407)
 Helen D. Erickson (408)
 Thomas M. Eser (409)
 Nelson C. Eshleman (410)
 William Dorsett Essick (411)
 John E. Evans (412)
 Leonard I. Evans (413)
 Robert Eugene Evans (414)
 John L. Everett (415)
 William E. Evrard (416)
 Raymond Allen Eyanson (417)
 Francis T. Eyre (418)
 Wilbur David Fanchier (419)
 George Fanger (420)
 Edward M. Farcas (421)
 William A. Faucett (422)
 James Robert Fedie (423)
 Charles M. Ferguson (424)
 Charles P. Ferranti (425)
 Ronald F. Fetzer (426)
 Lowell D. Fiegel (427)
 James William Fielding (428)
 Enoch Fields (429)
 Herbert R. Fields, Jr. (430)
 Edward V. Finuf (431)
 Alfred D. Fisher (432)
 Max L. Fisher (433)
 Stanley H. Fitts (434)
 William F. FitzGerald (435)
 John L.P. Flanagan (436)
 Loyal A. Flanary (437)
 James D. Flanigan (438)
 William B. Fleming (439)
 David G. Fletcher (440)
 Carl Henry Flores (441)
 Francisco D. Flores (442)
 Willard M. Flowers (443)
 Albert J. Floyd, Jr. (444)
 Thomas J. Flynn (445)
 John George Fode (446)
 Cyrus H. Folker (447)
 James D. Fons (448)
 Ixon Fontenot (449)
 Clifford Forrest (450)
 Thomas M. Forsyth, Jr. (451)
 Elisabeth M. Forte (452)
 Jack L. Foster (453)
 Willie James Foster (454)
 Harland Wade Fowler, Jr. (455)
 Donald A. Fraser (456)
 Robert Edwin Fraser (457)
 Jenis B. Frashure (458)
 Robert M. Freakley (459)
 John J. Freifield (460)
 Paul Eugene French (461)
 William R. Frey (462)
 Basil J. Fri (463)
 Howard N. Friend (464)
 Joseph E. Fritz (465)
 Russell W. Fritzinger (466)
 Donald L. Frye (467)
 Robert Cody Fuller, Jr. (468)
 John P. Fullerton (469)

- James Richard Fulmer (470)
 Augustus A. Fulton, Jr. (471)
 Frank E. Funk (472)
 Joseph Frank Furrer (473)
 Joe S. Gabaldon (474)
 Robert E. Gabe (475)
 Joseph W. Galek (476)
 Dominick Emil Galione (477)
 Wallace M. Gallant (478)
 Pete J. Gallegos (479)
 Howard E. Galloway (480)
 Robert D. Gammell (481)
 Gerald M. Gandy (482)
 Odell Jack Gardner (483)
 Robert William Gardner (484)
 Cleo M. Garland (485)
 Vivian P. Garza (486)
 Aubrey S. Gaskins (487)
 Jack C. Gentry (488)
 John S. Geoghegan (489)
 Billy D. George (490)
 Donald E. George (491)
 David E. Gerald (492)
 John Germek (493)
 Juanito Castillo Geronimo (494)
 James J. Gettings, Jr. (495)
 Nicholas A. Gettino (496)
 Melvin W. Gibbs (497)
 Edna E. Gibson (498)
 John W. Gibson (499)
 Marie Ethel Gibson (500)
 executrix of the estate of
 Cecil Edward Gibson
 Glen O. Gier (501)
 Paul Travis Gilbert (502)
 Robert Clyde Gildart (503)
 Larry D. Gillen (504)
 Theodore B. Gillette (505)
 Robert A. Gilmore, Sr. (506)
 Lester Gilstrap (507)
 Benjamin F. Ginn (508)
 Daniel E. Ginn (509)
 Robert Anthony Gleich (510)
 John W. Glick (511)
 Everett Kenneth Goad (512)
 Howard W. Goad (513)
 Alberta M. Goetz (514)
 Jules R. Goetz (515)
 Martin Paul Golden (516)
 Eugene T. Goldsberry (517)
 Alfred Gonzalez (518)
 Richard Olon Gooch (519)
 Donald K. Goodin (520)
 Sheldon J. Goodman (521)
 Garey K. Gordon, Sr. (522)
 John E. Gordon (523)
 John H. Gordon (524)
 Richard M. Gordon (525)
 James D. Gorst (526)
 William M. Gose (527)
 Franklin G. Goss (528)
 Milford Carlton Gossard (529)
 Donald E. Gotimer (530)
 David C. Gould (531)
 Robert L. Gover (532)
 Tracy V. Graff (533)
 Alphonse Joseph Graffeo (534)
 Ellis Graham (535)
 George A. Graham, Sr. (536)
 Harry E. Graham (537)
 Stanley S. Graham (538)
 Christopher Grant, Jr. (539)
 Michael Grasso, Jr. (540)
 George M. Gratzner (541)
 Jim J. Graves (542)
 Julian F. Gray (543)
 Jacob George Gredicek (544)
 Eddie Joe Green (545)
 Gerald E. Green (546)
 Joseph Lee Green (547)
 Louis Green, Jr. (548)
 Thomas D. Green (549)
 John A. Greene (550)
 William Harrison Greer (551)
 Kasimir Gregov (552)
 Leslie M. Greiner (553)
 Devin William Griffin (554)
 Herbert L. Grills (555)
 Ernest Leroy Grim (556)
 Jeter Grimsley (557)
 Ronald Grouchy (558)
 Thomas Grzanka (559)
 Frederick H. Guindon (560)
 James J. Guizlo (561)
 Stanley A. Guntack (562)
 Henry B. Gusgeski (563)
 Kenneth R. Gustafson (564)
 Urban A. Gutting (565)

- Harry G. Guyton (566)
 Milton Leo Haberman (567)
 Robert J. Hafey (568)
 Herbert F. Hairston (569)
 George B. Hale, Jr. (570)
 Max G. Hale (571)
 Meredith S. Hale (572)
 Charlie F. Hall (573)
 Glen Roland Hall (574)
 Michael Halliday (575)
 Paul Ensio Halonen (576)
 David W. Halphen (577)
 James Edward Halpin (578)
 Margaret K. Hamberger (579)
 Donald J. Hamilton (580)
 Helen E. Hamilton (581)
 sole heir of
 Andrew Dennis Hamilton
 Isaac Madison Hamilton (582)
 Virgil T. Hammond (583)
 Hazel Delk Hancock (584)
 Robert Edward Hancock, Jr.
 (585)
 Jerry LeRoy Hand~~e~~l (586)
 Stanton Lee Handley (587)
 Vernon Lee Handley (588)
 James R. Handschuh (589)
 Edward Joseph Handy (590)
 Johnny L. Handy (591)
 Rudyard H. Hansen (592)
 Orwood M. Hanson (593)
 Ernest Henry Hardaway (594)
 Raphael M. Harding (595)
 Frederick George Harman (596)
 Robert V. Harper (597)
 George J. Harrington (598)
 James A. Harris (599)
 Kenneth A. Harris (600)
 Oscola B. Harris (601)
 Richard Alvin Harris (602)
 Richard C. Harris, Jr. (603)
 Theodore Harris (604)
 William Harris, Jr. (605)
 Kenneth Clay Harrison (606)
 Edward J. Hart, Jr. (607)
 David Barry Harvey (608)
 Leslie A. Harville (609)
 Walter Harwell, Jr. (610)
 Donald Lisle Harwood (611)
 James V. Hastings (612)
 Isaac T. Hatton (613)
 Robert O. Hawkins (614)
 Joseph M. Hayden (615)
 Robert T. Hayden (616)
 Robert Arnold Hayes (617)
 Frankie E. Hays (618)
 William P. Hazen (619)
 Ernest Dale Headley (620)
 John S. Heegeman (621)
 G.C. Heffner (622)
 Sheldon Louis Heidemann (623)
 Donald E. Heidenreich (624)
 Gerard Heimer (625)
 James E. Heintz (626)
 Theodore Heller (627)
 Robert T. Hemmen (628)
 Marmon D. Hendrix (629)
 Phillip N. Henri (630)
 Anthony J. Henry (631)
 Edward L. Henry (632)
 Thomas J. Herbert (633)
 William P. Herndon (634)
 Elmer J. Herringer (635)
 John Linwood Hersey (636)
 Elmer Hester (637)
 Paul William Hetz (638)
 Charles Joseph Hicks, Sr. (639)
 Jack Higgins (640)
 Thomas E. Higginson (641)
 Francis J. Hilcoske (642)
 Lyonel S. Hildes (643)
 Elbert C. Hill (644)
 Marion O. Hill, Jr. (645)
 Charles J. Hillsdale (646)
 Jesse Hinton (647)
 Maurice E. Hirtle (648)
 George W. Hodges (649)
 Harry Allen Hodges (650)
 Arthur Albert Hoffman (651)
 George F. Hoffman (652)
 James D. Hoffman (653)
 Duane Hogue (654)
 Dennis L. Holbrook (655)
 Johnny E. Holdway (656)
 W.L. Holemon (657)
 Raymond Richard Holien (658)
 Louis R. Holland (659)
 Joel M. Hollis (660)

- Charles E. Holt (661)
 Doy C. Holt (662)
 Robert B. Honeck (663)
 Raymond Alexander Hood (664)
 Merwyn E. Hooten (665)
 James E. Hopper (666)
 Leonard W. Horgan (667)
 Robert L. Horschman (668)
 Theodore W. Horstmann (669)
 Wendell Thomas Houghton (670)
 Robert F. Hovestadt (671)
 Alfred Mann Howard (672)
 Charles E. Howard (673)
 Edward N. Howard (674)
 Allen L. Howells (675)
 Harry G. Howton (676)
 Charles Hropvich (677)
 Jacob M. Huber (678)
 Jerome J. Huber (679)
 Everett W. Huckleberry (680)
 Glenn E. Hudson (681)
 Charles E. Hughes (682)
 James Lindberg Hughes (683)
 Marilynn Fritz Hughes (684)
 Robert A. Hughes (685)
 Nathan Hundley (686)
 James Wood Hunt, Jr. (687)
 Newman Ervin Hunt (688)
 Gilvie Harold Huntley (689)
 William Hurley (690)
 Ted G. Huss (691)
 Clement E. Hymel (692)
 Parmenio A. Iglesias (693)
 Steve J. Illes (694)
 J.W. Inlow (695)
 Carl Franklyn Irving, Jr. (696)
 Ruth M. Isham (697)
 Robert P. Iversen (698)
 May Britt Iverson (699)
 sole heir of
 Martin Iverson
 Hyman Jackson (700)
 Louis Bernard Jackson (701)
 Marvin Eugene Jackson (702)
 Paul Sherman Jackson (703)
 William H. Jackson (704)
 Joseph A. Jacob (705)
 Oscar J. Jahnsen, Jr. (706)
 George Roger James (707)
 Bill Frank Jeanes (708)
 Robert H. Jefferson (709)
 Clifford H. Jeffords (710)
 Alex Jenkins (711)
 Buster Jenkins (712)
 Stanley N. Jensen (713)
 Grady Lewis Jester (714)
 Harold P. Jewett (715)
 Annie L. Johnson (716)
 Bernie Franklin Johnson (717)
 Charles W. Johnson (718)
 Dean Quentin Johnson (719)
 George F. Johnson (720)
 Glenn A. Johnson (721)
 Harlan T. Johnson (722)
 Herbert F. Johnson (723)
 John E. Johnson (724)
 Robert Wendell Johnson (725)
 Sylvester Johnson (726)
 William K. Johnson (727)
 Sidney F. Johnston, Jr. (III) (728)
 Richard B. Jones (729)
 Vernon E. Jones (730)
 William Albert Jones (731)
 Linwood Webster Jordan, Jr. (732)
 Martin J. Juback (733)
 Oliver A. Judd (734)
 Martin Kaloostian (735)
 Donald Bunji Kaneshiro (736)
 John V. Kardach (737)
 Nicholas G. Karthas (738)
 Abraham G. Kaufmann (739)
 Alfred F. Kayser (740)
 Donald H. Kedzie (741)
 John H. Keegan (742)
 Wallace W. Keehr (743)
 John Butterfield Keihn (744)
 Randall S. Keller (745)
 George T. Kelley (746)
 Frank P. Kelly (747)
 Joseph M. Kelly (748)
 Peter J. Kelly, Jr. (749)
 William Daniel Kennedy (750)
 John B. Kerridge, Jr. (751)
 Gene P. Kesler (752)
 James E. Keys (753)

- Donald L. Kidwell (754)
 Richard D. Kiick (755)
 Francis H. Killeen (756)
 Edward L. King (757)
 William M. King (758)
 Ervin Earl Kirkpatrick (759)
 Richard G. Kisling (760)
 Ronald W. Kissick (761)
 Peter D. Kjeldgaard (762)
 Anthony M. Klasinski (763)
 Frederick Nelson Klein, Jr.
 (764)
 Ronald J. Klein (765)
 Shirley Elizabeth Klein (766)
 Joseph Klesen (767)
 Lewis E. Klotzbach (768)
 Joseph M. Klues (769)
 John Frank Kneip, Jr. (770)
 Francis J. Kobige (771)
 Richard Koeller (772)
 Joe Kolesar (773)
 Frederick William Korbitz, Jr.
 (774)
 Louis Korchek (775)
 Emmett Lavern Kozel (776)
 Jos. L. Kozik (777)
 Leo Warren Kraft (778)
 Allen G. Kramer (779)
 Fred Kramer (780)
 Edward L. Krapcha (781)
 Steve J. Krasinski (782)
 Erbie Henry Krause (783)
 Virgil E. Krause (784)
 Constantine M. Kulbitsky (785)
 Joseph Francis Kulick, Sr.
 (786)
 Frank John Kut (787)
 Odis Ladd (788)
 Lawrence A. Laliberte (789)
 Axley E. Lambert (790)
 Arthur P. Lancy (791)
 John Quincy Landers (792)
 Lowell H. Landre (793)
 Helen Mary Languell (794)
 executrix of the estate of
 Iassie M. Languell
 Preston A. Lankford (795)
 William P. LaPointe (796)
 Robert Nason Larrabee (797)
 Bruno M. Larsen (798)
 Henry C. Larsen (799)
 Walter Larsh (800)
 Leslie Orrin Larson, Jr. (801)
 Richard M. Lasher (802)
 Paul E. Lasker (803)
 Carl Bradley Laster (804)
 Peter J. Laurenzo (805)
 Albert H. Lavery (806)
 Edward C. Lawrence (807)
 Loral Edwin Lawrence (808)
 William E. Lawson (809)
 Warren Royton Layton (810)
 Walter R. Leahy (811)
 John F. Leak (812)
 Leon Joseph LeBorgne (813)
 John Lee (814)
 Ray H. Lee (815)
 T.R. Legett, Jr. (816)
 James William Lemmon (817)
 Antonio Lemos (818)
 Roy R. Leno (819)
 Cleve R. Lenz (820)
 George B. Lerner (821)
 John J. Lernihan (822)
 Roy L. Lessmann (823)
 George Sigurd Lester (824)
 Eugene J. Letalien (825)
 Clarence Frederick Letchworth
 (826)
 Wayne S. Lethgo (827)
 Horace S. Levy (828)
 Clarke H. Lewis (829)
 Thomas Alexander Lewis (830)
 Donald L. Licht (831)
 Prentice A. Lindsay (832)
 Henry R. Lingier (833)
 Frederick A. Lingner (834)
 Jack H. Linn (835)
 William S. Loehr (836)
 Ralph A. Loff (837)
 Terry Steward Longtin (838)
 James W. Loop (839)
 Francis J. Lopes (840)
 Isaac L. Lopez (841)
 Joseph Neil Loving (842)
 Maximilian Lubawy, Jr. (843)
 Henry H. Lucas (844)
 Homer Clark Lucas (845)

- Stanley R. Lucek (846)
 Manuel Luciano (847)
 Francis C. Luck (848)
 Morgan A. Lunsford (849)
 Erick C. Luoma (850)
 James Donald Luther (851)
 Joseph J. Lyden (852)
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 Dale William Lynch (854)
 Richard P. Lynch (855)
 Joseph E. Lyons (856)
 Alfred G. Lyscio (857)
 David J. MacCarrol (858)
 John E. Maceda (859)
 Jack MacFarlane (860)
 Wallace D. MacGregor (861)
 Crawford C. MacKenzie (862)
 James Elkins Maddox (863)
 Victor E. Madura (864)
 Roy D. Magaw (865)
 James Patrick Maguire (866)
 William Malloy (867)
 William H. Maness (868)
 Walter Joseph Marcoux (869)
 Ronald D. Marcum (870)
 James P. Marenchin (871)
 Frank W. Margara (872)
 Gabriel S. Marge (873)
 Irving B. Margolis (874)
 Joseph H. Marshall (875)
 Edward Marti (876)
 David R. Martin (877)
 Donald J. Martin (878)
 James T. Martin (879)
 James W. Martin (880)
 Norman Martin (881)
 William David Martin (882)
 William Randall Martin (883)
 Felix Martinez (884)
 Joseph R. Martinez (885)
 Edgar J. Masters (886)
 Gallais E. Matheny (887)
 Norman G. Mathias (888)
 Raymond L. Matthews (889)
 Joseph Mattioli (890)
 Edmond Matton (891)
 Stephen F. Matussek (892)
 Chester William Maxwell (893)
 Hollis B. May, Jr. (894)
 Orrin S. Maybee (895)
 August A. Maynard (896)
 Edmund W. Mays (897)
 Charles T. McAndries (898)
 Harold B. McAnney (899)
 Patrick J. McAviney (900)
 Geraldine E. McCain (901)
 Virgil McCann (902)
 George F. McCarty (903)
 James R. McCauley (904)
 Carmen G. McClellan (905)
 Douglas G. McComas (906)
 Willard D. McCombs (907)
 William J. McCormick, Jr. (908)
 George S. McCoy (909)
 Robert Carl McCulloch (910)
 Thomas J. McCullough (911)
 Robert Q. McCully (912)
 Jay L. McDonald (913)
 Richard McDonough (914)
 James D. McDougall (915)
 Donald J. McDowell (916)
 Kevin W. McGibney (917)
 Sherman G. McGill (918)
 Joseph A. McGillivray, Jr. (919)
 Perry Wilbur McGlynn (920)
 Daniel Harry McGraw, Sr.
 (921)
 James E. McGuinness, Sr. (922)
 Purley D. McHaney, Jr. (923)
 Harry F. McHarvey (924)
 Thomas H. McKenzie (925)
 William R. J. McKeon (926)
 Stephen G. McKernan (927)
 Darrell Eugene McKinney (928)
 Herbert Smith McKinney (929)
 John R. McKnight (930)
 William V. McKnight (931)
 Daniel P. McLaughlin (932)
 Thomas L. McNierney (933)
 Charles W. McShan, Jr. (934)
 John P. McSweeney (935)
 Henry Meadors, Jr. (936)
 Albert William Means (937)
 James Meehan (938)
 Johnnie V. Meier (939)
 Warren S. Meighan (940)
 John Vincent Melim (941)

- Domingo Mendiguchia, Jr. (942)
 Arthur G. Mercier (943)
 Bruce W. Mertz (944)
 Bruce L. Meyer (945)
 John A. Meyer (946)
 Theodore Edwin Meyer (947)
 Edwin C. Meyers (948)
 Ira R. Meyers (949)
 Joseph H. Michalski (950)
 Theodore Mija (951)
 George William Mikesell, Jr. (952)
 Earl B. Milburn (953)
 Jimmy B. Miles (954)
 Edward W. Miller (955)
 Gilbert A. Miller (956)
 Harry Joseph Miller (957)
 Philip Rayford Miller (958)
 Walter D. Miller (959)
 Carl Irving Mills (960)
 Harry Alan Mills (961)
 John E. Mills (962)
 John R. Mills (963)
 Royce R. Mills, Jr. (964)
 Albert Milnar (965)
 Mary Agnes Milot (966)
 Ernest P. Miniard (967)
 John W. Minick (968)
 James A. Mitchell (969)
 Kenneth William Mitchell (970)
 Lewis Mixner (971)
 Allen H. Mohrey, Jr. (972)
 Alexis Moka (973)
 Jesse L. Monroe (974)
 Richard A. Montgomery (975)
 Louis C. Montoya (976)
 Robert C. Moody (977)
 William B. Moody (978)
 George Edward Moore (979)
 James W. Moore (980)
 John E. Moore (981)
 Harold L. Moorehead (982)
 Richard K. Moores (983)
 Sam Peter Morea (984)
 Pattice Lynn Morgan (985)
 Shirley L. Morgan (986)
 John F. Morrell (987)
 Horace S. Morris (988)
 Wilfred E. Morrissey (989)
 Joseph J. Morrison (990)
 Terrance Lee Morrone (991)
 Harry Weil Morse (992)
 Reynold Lewis Mosley (993)
 Carol June Mulligan (994)
 sole heir of the estate of
 James Joseph Mulligan
 James G. Mumby (995)
 William Howard Mundhenk (996)
 Walter E. Murdock (997)
 Chauncey W. Muse (998)
 Charles B. Musgrave (999)
 Charles W. Myer (1000)
 Harold L. Myron (1001)
 Edward J. Mysicka (1002)
 Jules Nagy (1003)
 Edward J. Narlesky (1004)
 Richard L. Naujoks (1005)
 James W. Neal (1006)
 Sammy L. Neibauer (1007)
 Omer L. Neil (1008)
 Harry F. Nelson (1009)
 Lewis C. Nelson (1010)
 Ronald S. Nelson (1011)
 William H. Nelson (1012)
 Walter J. Nentl (1013)
 Charles A. Neri (1014)
 Vincent F. Neuroth (1015)
 Fletcher E. Newland (1016)
 Thomas Newman (1017)
 Jerome L. Newton (1018)
 Wylie Hoyle Newton (1019)
 Lawrence W. Nichols, Jr. (1020)
 Victor R. Nichols (1021)
 William C. Nichols (1022)
 William L. Nichols (1023)
 Elmer M. Nickerson (1024)
 Carmine Nicoletti (1025)
 Eugene J. Niedenthal (1026)
 Richard W. Niederkorn (1027)
 Albert J. Niemi (1028)
 Sidney Francis Nolan (1029)
 James Arnett Norman (1030)
 Joseph L. Norman, Jr. (1031)
 Lawrence LeRoy Norvell (1032)
 Lewis H. Norwood (1033)
 Lewis R. Nossal (1034)

- John Edward Novotny (1035)
 Troy A. Nuckols (1036)
 Robert A. Nulk (1037)
 Cecil W. Oakes (1038)
 Carey L. O'Bryan, Jr. (1039)
 James B. Oerding (1040)
 Charles W. Ogle (1041)
 Edward D. Oglesby (1042)
 Joseph P. O'Grady (1043)
 Thomas F. O'Grady, Sr. (1044)
 Desmond O'Keefe (1045)
 Floyd H. Oles (1046)
 Adam L. Olguin (1047)
 Earl E. Olive (1048)
 Elvin R. Olson (1049)
 Harold F. O'Neil (1050)
 Ross Dana Orcutt, Sr. (1051)
 Ralph S. Ortenzi (1052)
 Ralph Allen Osbon (1053)
 David A. Osborn (1054)
 William L. Otten, Jr. (1055)
 Alden Pakros (1056)
 John S. Pallatin (1057)
 Alfred L. Palmer (1058)
 Owen L. Palms (1059)
 Benjamin Palomino (1060)
 Donald Stephen Palso (1061)
 Adam Panarese (1062)
 Joseph F. Panzeca (1063)
 Peter P. Papp (1064)
 Gerald C. Paquin (1065)
 Gerald Edward Paris (1066)
 Kenneth M. Parks (1067)
 Albert Thomas Parr (1068)
 Douglas Carroll Parrish (1069)
 Loyd J. Parton (1070)
 Keith Pase, Jr. (1071)
 Kieth Allan Patchett (1072)
 Ralph R. Patrick (1073)
 George S. Patterson (1074)
 Robert Patty (1075)
 Donald C. Pauley (1076)
 Frederick G. Paulsen (1077)
 Gerald Thomas Payne (1078)
 Lucian Allen Peacock, Jr.
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 John R. Pearcey (1080)
 Howard Francis Peck (1081)
- Harvey E. Peckenschneider
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 Edward Frank Penak (1083)
 Frank Ellsworth Penoyar
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 Arvel H. Perry (1085)
 David Perry, Sr. (1086)
 George Gilbert Perry (1087)
 Jasper T. Perry (1088)
 Virgil Perry (1089)
 Homer D. Persinger (1090)
 Foster H. Peterkin (1091)
 Christian Robert Peters (1092)
 Herbert E. Peters (1093)
 John L. Peters (1094)
 Vernon H. Peters (1095)
 William F. Peterson (1096)
 Louis Frank Petrich (1097)
 Jack E. Pettyjohn (1098)
 Larry Kirk Phillips (1099)
 Joseph H. Pica (1100)
 David J. Pichler (1101)
 Harold W. Pierce (1102)
 John A. Pierce, Jr. (1103)
 Joseph A. Pino (1104)
 Matthew Bernard Piper, Sr.
 (1105)
 Raymond Platt (1106)
 Leon J. Plotnitzky (1107)
 William W. Plummer (1108)
 Fisher B. Plymale (1109)
 John Popik (1110)
 Charles L. Powell (1111)
 Joseph A. Powers, Jr. (1112)
 Jorge L. Prats-Goyco (1113)
 Richard F. Pratt (1114)
 John R. Pretti (1115)
 James E. Price (1116)
 Johnnie S. Price (1117)
 William Richard Proteau (1118)
 Eugene T. Przybyszewski
 (1119)
 John C. Quintilliani (1120)
 Michael H. Rabasca (1121)
 Zacarias Francisco Rael (1122)
 Grady W. Ramey (1123)
 Mercy Ramirez (1124)
 Jet Ramsey (1125)

- Helene Emmi Rand (1126)
 sole heir of
 Donald Charles Rand
 Melvin A. Rand (1127)
 Marvin Randolph (1128)
 Harry D. Ransier (1129)
 Howard E. Rarick (1130)
 George W. Ratliff (1131)
 Kenneth W. Ratliff (1132)
 Emanuel S. Ratner (1133)
 Charles Hammond Ray (1134)
 Gerald O. Raymond (1135)
 Joan A. Reardon (1136)
 Darrell Gene Redman (1137)
 Ralph L. Reed (1138)
 Larry Windsor Reeder (1139)
 Howard M. Reese (1140)
 Jack T. Reiser (1141)
 Robert E. Reitenour (1142)
 George W. Reitz (1143)
 Robert J. Renfro (1144)
 Al Reno (1145)
 Robert E. Renz (1146)
 William Repella (1147)
 Paul E. Retherford (1148)
 Donald B. Reyes (1149)
 Bernard L. Reynolds (1150)
 Foy Rice (1151)
 John A. Richards (1152)
 Robert Frederick Richardson
 (1153)
 Charles E. Richman (1154)
 Robert H. Richmond (1155)
 Clarence R. Riley (1156)
 Russell Olen Rimer (1157)
 Victor R. Rivera (1158)
 Victor P. Rizzo (1159)
 Douglas G. Roach (1160)
 Charles F. Roberson (1161)
 D.W. Roberson (1162)
 Wheeler H. Roberson (1163)
 John W. Roberts, Jr. (1164)
 Linton R. Roberts (1165)
 Lloyd W. Roberts (1166)
 Richardson Spotswood Robertson
 (1167)
 Walter Ingle Robinson (1168)
 Harry T. Roche (1169)
 Joseph J. Rock (1170)
 William M. Rockett (1171)
 Donald A. Rode (1172)
 John A. Rodriguez (1173)
 Phillip P. Rodriguez (1174)
 Leonard A. Rogers (1175)
 Joseph Griffin Rogillio (1176)
 David H. Rollie (1177)
 Richard M. Rosaler (1178)
 Percy Wesley Rose (1179)
 William H. Rose (1180)
 Bert Stanford Rosenbaum
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 John W. Rosequist (1182)
 Daniel Rosica (1183)
 Rufus V. Ross (1184)
 Nelson A. Rossman (1185)
 John V. Rota (1186)
 Bestow R. Rudolph (1187)
 Aristeo Ruiz (1188)
 Francis M. Russell (1189)
 John P. Russell (1190)
 Robert L. Russell (1191)
 Stanley E. Russell (1192)
 William A. Russell (1193)
 Robert Wilson Ryals (1194)
 Charles E. Ryan, Sr. (1195)
 John M. Ryan (1196)
 Ralph R. Ryan (1197)
 Joseph A. Sacco (1198)
 Omer A. Saffly (1199)
 Wayne B. Sager (1200)
 Robert L. Salazar (1201)
 Ralph W. Salisbury (1202)
 Mike Sanders (1203)
 George Burton Sands (1204)
 Ronald George Sarcomo (1205)
 William C. Saunders (1206)
 Joseph E. Sawyer (1207)
 Daniel P. Scarborough (1208)
 Edwin L. Schall, Sr. (1209)
 Ensle I. Schilb, Jr. (1210)
 James A. Schliesmann (1211)
 Louis Joseph Schloegl (1212)
 Jack Herman Schmidt (1213)
 Richard Karl Schmidt (1214)
 Howard E. Schneider (1215)
 Uwe Schneider (1216)
 Albert G. Schoneberger (1217)
 William J. Schott (1218)

- Russell E. Schrader (1219)
 Ray W. Schrecengost, Jr. (1220)
 Russell D. Schriver, Sr. (1221)
 Donald G. Schumitsch (1222)
 Allan W. Schwartz (1223)
 Stanley M. Sciora (1224)
 James H. Scott (1225)
 Jerome C. Scott (1226)
 Lester H. Scott (1227)
 Louis Arthur Scripa, Jr. (1228)
 Joseph M. Scruggs (1229)
 John R. Seay (1230)
 Robert Thomas Seek (1231)
 Harold Raymond Selfridge
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 Stephen Serbeniuk, Sr. (1233)
 Terry Michael Sergeant (1234)
 Ronald Serrats (1235)
 Reed W. Settle (1236)
 Philip R. Sevores (1237)
 William C. Shadley (1238)
 Leo Paul Sharon (1239)
 Anthony R. Shaw, Jr. (1240)
 Harry J. Shedleski (1241)
 Malcom E. Shelley (1242)
 Charles K. Shelton (1243)
 Marion T. Shelton (1244)
 Byron E. Sheppard (1245)
 Morris Edward Sheppard (1246)
 Julian Roland Sherman (1247)
 Herbert H. Sherrard (1248)
 Henry M. Shields (1249)
 William Dean Shirley (1250)
 Odis William Shivers (1251)
 Lawrence R. Shockley, Jr. (1252)
 Wilbur A. Sidney (1253)
 Eugene A. Siegel (1254)
 Bernard M. Sievers (1255)
 Jose B. Silva (1256)
 Franklin S. Simon (1257)
 Angelo J. Simone (1258)
 Joseph B. Simpson (1259)
 Paul W. Simpson (1260)
 Joseph M. Sims (1261)
 Richard T. Siudzinski (1262)
 Leo C. Sivley (1263)
 Andrew Slobodian (1264)
 Billy J. Slusher (1265)
 Martin J. Small (1266)
 A. Leo Smith (1267)
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 Ethridge Rudolph Smith (1269)
 Francis L. Smith (1270)
 Frank E. Smith (1271)
 Frank L. Smith (1272)
 Gordon W. Smith, Jr. (1273)
 James P. Smith, Jr. (1274)
 Jasper B. Smith (1275)
 Jerry Jo Smith (1276)
 Leonard H. Smith, Jr. (1277)
 T.D. Smith (1278)
 Thomas Smith (1279)
 William E. Smith, Jr. (1280)
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 Theodore M. Smyer (1282)
 Hugh M. Smythe (1283)
 Gilbert P. Snell (1284)
 Bill E. Snider (1285)
 Richard R. Snyder (1286)
 Frank James Socky (1287)
 Peter S. Sojda (1288)
 Edward J. Solomonow (1289)
 William F. Somers (1290)
 Luke J. Sonsalla (1291)
 William E. Southwick (1292)
 Carl A. Speaks (1293)
 R.E. Spear (1294)
 Louis George Spears (1295)
 William W. Spiess (1296)
 Edward Winifred Spinaio (1297)
 Clarence D. Sprague (1298)
 Sheldon A. Squair (1299)
 Joseph P. Squatrito (1300)
 E. J. Srch (1301)
 Stephen Sredonja (1302)
 Otis W. Stafford (1303)
 Richard E. Stahl (1304)
 Robert V.A. Stamper (1305)
 Edward V. Staneart (1306)
 Ronald J. Staples (1307)
 Donald Louis Stark (1308)
 Orin H. Stark (1309)
 William A. Staub (1310)
 Cecil Maynard Steele (1311)
 Robert S. Steigerwald (1312)
 Eugene William Stephan (1313)
 Joseph W. Stephan (1314)
 Ernest L. Stephens (1315)

- Bernard E. Sterling (1316)
 Arnold E. Stevens (1317)
 Joseph W. Stevens (1318)
 Grady J. Stewart (1319)
 Harold L. Stewart (1320)
 Hershel P. Stewart (1321)
 Ronald G. Stinebiser (1322)
 William E. Stives (1323)
 David C. Stoessel (1324)
 Donald J. Stogsdrill (1325)
 Donald S. Stone (1326)
 Robert Lee Storey (1327)
 Joseph R. Stotsky (1328)
 John Robert Stout (1329)
 Joseph G. Stout (1330)
 Charles F. Strachan (1331)
 Michael D. Stracquadanio (1332)
 Andrew Charles Straton (1333)
 Corbin S. Strickland, Jr. (1334)
 Joseph Stringfield (1335)
 Roy Strockbine (1336)
 Charles D. Strong, Jr. (1337)
 Raymond W. Studebaker (1338)
 Harry G. Stull, Jr. (1339)
 Daniel P. Sullivan (1340)
 Sardis Max Sullivan (1341)
 Peter David Summer, Jr. (1342)
 Arnold A. Svacek (1343)
 Nicholas E. Svetich (1344)
 Jimmie Lee Swafford (1345)
 Ralph B. Swindoll (1346)
 David George Swinford (1347)
 Thomas G. Symonds (1348)
 Jack L. Tabor (1349)
 Daven Earl Taggert (1350)
 David J. Tanner (1351)
 Roy G. Tanner (1352)
 Paul E. Tardiff (1353)
 Bruce E. Tate (1354)
 William D. Tatler (1355)
 Harold Alfred Taylor (1356)
 Howard E. Taylor (1357)
 Jack Wilson Taylor (1358)
 Paul P. Taylor (1359)
 Robert Eugene Taylor (1360)
 William N. Taylor (1361)
 Donald M. Telford (1362)
 Burley D. Tennant, Sr. (1363)
 William J. Terrio (1364)
 Jack Terzian (1365)
 Arthur Cecil Thomas (1366)
 Aubrey Eugene Thomas (1367)
 Claude Jay Thomas (1368)
 John F. Thomas (1369)
 Joseph J.G. Thomas, Jr. (1370)
 Spencer Farrington Thomas⁻
 (1371)
 Edward G. Thompson (1372)
 Jesse P. Thompson, III (1373)
 John L. Thompson (1374)
 John M. Thompson (1375)
 Glenn Alvin Tierney (1376)
 Herbert S. Tilley (1377)
 Ralph N. Tison, Jr. (1378)
 Lowell Edward Todd (1379)
 Emery Harold Toliver (1380)
 Sherrill L. Tolley (1381)
 John V. Tomashunas (1382)
 Ralph T. Tomberg (1383)
 Robert J. Tomlin (1384)
 James C. Tottingham (1385)
 Ward Francis Trammel (1386)
 Henry J. Tautwein (1387)
 Thomas J. Travers (1388)
 William A. Travis, Sr. (1389)
 John William Treat (1390)
 Lena J. Trenary (1391)
 sole heir of
 Lyle Dwight Trenary
 George X. Trimble (1392)
 Manuel S. Trindade (1393)
 Virgil T. Trolinder (1394)
 Herman H. Trulsen (1395)
 Ernest R. Tucker (1396)
 James Leslie Tucker (1397)
 Bernard C. Tumulty (1398)
 Douglas Orville Turner (1399)
 James G. Turrietta (1400)
 Raymond D. Tuttle (1401)
 Lawrence H. Tyler (1402)
 William M. Umberger (1403)
 Matthew F. Unger (1404)
 Walter Urbach (1405)
 David V. Usher (1406)
 David Joseph Uzdarwin (1407)
 Vincent Louis Vaccaro (1408)
 Lew R. Valeau (1409)
 Gene Arden Vance (1410)

- Leroy F. Vandegrift, Jr. (1411)
 Kenneth V. Vantrease (1412)
 Amos L. Vaughan (1413)
 Holland R. Vaughn II (1414)
 Jack A. Veber (1415)
 Charles H. Veselka (1416)
 John A. Vincent (1417)
 Lee P. Vincent (1418)
 Lamont Vitek (1419)
 Cleo Lee Viviano (1420)
 Oscar James Vogl (1421)
 Richard D. Vogt (1422)
 Karl W. Volk (1423)
 David Matthew Wade (1424)
 Lawrence R. Wagner (1425)
 Marilyn P. Wagner (1426)
 Cornelius A. Wahl (1427)
 Charles F. Walker (1428)
 Charles Wayne Walker (1429)
 Donald L. Walker (1430)
 Robert S. Walker, Jr. (1431)
 Harry Robert Wallace (1432)
 Frank A. Walls (1433)
 George W. Walls (1434)
 James Edward Walsh (1435)
 Leo Francis Walsh (1436)
 Melville J. Walters, Jr. (1437)
 Robert E. Walters (1438)
 Raymond E. Walther (1439)
 Charles William Ward (1440)
 William F. Ward (1441)
 William L. Wardell (1442)
 John Warhol (1443)
 Ladislaus Watega (1444)
 Harry D. Waters (1445)
 Charles H. Watkins (1446)
 David Harold Watkins (1447)
 Eugene A. Watkins, Sr. (1448)
 Howard K. Watkins (1449)
 Calvin M. Watson (1450)
 Joseph E. Watson (1451)
 William Russell Watson (1452)
 Henry G. Watts (1453)
 James R. Watts (1454)
 Robert Allen Waugaman (1455)
 William F. Weakley (1456)
 Carl H. Weaver (1457)
 Wilbur D. Weaver (1458)
 Albert E. Webb (1459)
 Donald Alvin Weber (1460)
 Harry E. Weber (1461)
 Paul Weber (1462)
 William E. Weber (1463)
 Henry A. Wedell (1464)
 Charles D. Wedge (1465)
 William Clinton Weeks (1466)
 John T. Weiller (1467)
 William A. Weinbender (1468)
 Wayman C. Welch (1469)
 Sheldon B. Wells (1470)
 Chris O. Wentzell (1471)
 Sherwood H. Werner (1472)
 Lawrence J. Wernsman (1473)
 Morris Elwood West (1474)
 Roy D. West (1475)
 Dewey D. Westfall (1476)
 John David Weston (1477)
 Jacqueline P. Westphal (1478)
 independent executor of the
 estate of Ralph E. Westphal
 Donald E. Whalen (1479)
 Charles P. Whelan (1480)
 Kenneth T. White (1481)
 Lawrence L. White (1482)
 Robert Earl White (1483)
 Roy A. White (1484)
 Thomas Albert Whitehead
 (1485)
 William A. Whitfield (1486)
 Ernest E. Whitney (1487)
 Malchiga C. Whitworth (1488)
 Joseph P. Wick (1489)
 Willie G. Wicker (1490)
 Stanley E. Wiczorek (1491)
 Jimmy J. Wiggins (1492)
 Kenneth L. Wilcox (1493)
 Bobby LaVan Wilhelm (1494)
 John C. Wilkens (1495)
 Raymod Leo Wilkes (1496)
 Alton Curtis Williams (1497)
 Arthur McKinley Williams
 (1498)
 Doyle D. Williams (1499)
 Fred Williams (1500)
 Gordon R. Williams, Sr. (1501)
 Harold Alonzo Williams (1502)
 John G. Williams (1503)
 Lewis Cass Williams, Jr. (1504)

Lindbergh G. Williams (1505)
 Luther D. Williams (1506)
 Thomas E. Williams (1507)
 Warren H. Williams (1508)
 Jean Paul Willis (1509)
 Frederic S. Wilson (1510)
 Jack F. Wilson (1511)
 Marvin R. Wilson (1512)
 Ollie J. Wilson (1513)
 Victor L. Wilson (1514)
 Anse E. Windham (1515)
 Perry P. Winemiller (1516)
 Richard C. Winship (1517)
 Bryan L. Winters (1518)
 Clifton E. Wiswall (1519)
 James W. Wofford, Jr. (1520)
 Robert C. Wolf (1521)
 Theodore C. Wolf (1522)
 Stephen Wolonsky (1523)
 Donald E. Wommer (1524)
 John R. Wood (1525)
 Robert Hudson Wood (1526)
 Robert Jerome Wood (1527)

Ted J. Wood (1528)
 William Lawrence Woodin
 (1529)
 John C. Woodley (1530)
 Russell E. Woodruff (1531)
 Charles T. Woods (1532)
 Billy G. Wooley (1533)
 Frederick C. Wyse, Jr. (1534)
 James Yadrich (1535)
 Daniel A. Yancy (1536)
 Albert W. Yarberry (1537)
 Charles W. Yaroshak (1538)
 Roy Carson Yates III (1539)
 Thomas J. Yates (1540)
 Joseph M. Yatsko (1541)
 Carl William Yoder (1542)
 Francis H. Yonker (1543)
 Maurice C. York (1544)
 Allan Lewis Young (1545)
 Jerry George Zalman (1546)
 Frank J. Zavodsky (1547)
 Robert William Zivnuska (1548)=

Lloyd W. Abbott, et al. v. United States,
United States Claims Court, No. 62-85C

Lloyd W. Abbott (1)	Karl R. Dobereiner (48)
Gene B. Aittala (2)	Robert G. Domeier (49)
Ralph C. Anderson (3)	Jose Dominguez (50)
Aime Maurice Arsenault (4)	John P. Downes (51)
Donald L. Barbeau (5)	Arthur A. Drouin (52)
Billy O. Barrier (6)	Armand A. DuBois (53)
Raymond R. Battreall, Jr. (7)	Dwight D. Durden (54)
Robert W. Becker (8)	Raymond J. Durkee (55)
William Douglas Bell (9)	Glenn E. Eddy (56)
James William Bennett (10)	Athelone R. Edwards (57)
Jackson R. Bentley (11)	Donald M. Ellis (58)
Adan Biegas (12)	James H. Evans (59)
Oliver Bond (13)	Jack Faul (60)
Ernest H. Bowen (14)	Richard Francis Faust (61)
Eldon Elwood Bowman (15)	Henry F. Fuchs (62)
Donn T. Boyd (16)	Joseph D. Gallagher (63)
George Brennan (17)	Grady H. Gayler (64)
Edward B. Brooks (18)	Wesley Melvin Gaylord (65)
Henry B. Brown (19)	Kennard W. Gephart (66)
John W. Brown (20)	William F. Glover (67)
Lavorne Brunson (21)	Paul A. Golden, Sr. (68)
Oren Wayne Bryant (22)	James H. Goram (69)
Fred Bull (23)	David L. Grieger (70)
George P. Burchett (24)	William J. Gwinner (71)
Emmett G. Byrnes (25)	Curt A. Hanke (72)
Ervin D. Caldwell (26)	Charles C. Hansen (73)
Richard W. Campbell (27)	Walter E. Haralson (74)
Richard C. Carlson (28)	Walter M. Harrell (75)
Wilbert O. Carson (29)	Charles Roger Harvey (76)
Kenneth L. Channell (30)	Kenneth O. Harwell, Sr. (77)
Joe L. Charleston (31)	Tommie H. Hatley (78)
Mitchell Charles Chutuk (32)	George F. Hayes, Sr. (79)
Walter E. Coffenberry (33)	Robert H. Haywood (80)
John J. Coleman (34)	Richard F. Henry (81)
Delton Collins (35)	Jerry W. Herston (82)
George F. Conroy (36)	Robert H. Hibbens (83)
Russell L. Coombs (37)	Darrell R. Hoffman (84)
Michael V. Courtney (38)	J. U. Holiday (85)
John V. Crahan (39)	Mary L. Hootman (86)
Fred R. Crews (40)	Walker E. Horne (87)
Fred O. Cruz (41)	Matthew Howard (88)
Delmer M. Dalby (42)	Michael Peter Hudanick (89)
Peter J. Daniels (43)	Ronald D. Huffman (90)
Jack H. DeHart (44)	Jackson M. Hunt (91)
Eugene C. Densley, Jr. (45)	Frank T. Huray (92)
Van F. Dittberner (46)	George N. Jackson (93)
Bruce G. Dixon (47)	Harold P. Jensen (94)

- Herbert O. Jensen (95)
 Joseph G. Johnson (96)
 Henry M. Johnston (97)
 Kenneth R. Jones (98)
 Richard Lynnwood Jones (99)
 Donald B. Judd (100)
 Charles W. Kendrick (101)
 Leonard N. Kimball (102)
 Curtis King (103)
 Robert C. King (104)
 Irvin F. Koerner (105)
 Cecil F. Kuhn (106)
 Carl R. Lawrence (107)
 Richard Francis Leander (108)
 Wilfred E. Lindo, Jr. (109)
 Francis L. Lumbar (110)
 Jerald E. Mahaffey (111)
 Cecil G. Marbut (112)
 Gilberto M. Martinez (113)
 Roberto Martinez (114)
 Herbert B. Masteller (115)
 Hiram D. McCall (116)
 Edward McCree (117)
 Roland G. McGraw (118)
 James Thomas McNeeley (119)
 William A. Meyer (120)
 Dwight P. Miller, Jr. (121)
 Herbert J. Miller, Jr. (122)
 James Thomas Miller (123)
 James R. Milligan (124)
 Frank J. Mizgorski (125)
 Phillip D. Moore (126)
 Wesley A. Moore, Sr. (127)
 William O. Mosley (128)
 Gerald Roy Moulton (129)
 Virgil D. Muskett (130)
 Ervin J. Musolf (131)
 Joseph B. Nalaschi (132)
 John Nazzaro (133)
 John Henry Neary, III (134)
 Willard A. Nelson (135)
 James Otis Norris (136)
 Jerry Orsak (137)
 Jose A. Santiago Otero (138)
 Harold W. Parlow (139)
 James J. Peterson (140)
 John A. Peterson, Jr. (141)
 John A. Pierson, Jr. (142)
 K. J. Pilcher (143)
 Frank Powstanski (144)
 Charles M. Prior (145)
 Frederick C. Raasch (146)
 Elmer H. Rather (147)
 Paul T. Ray (148)
 Robert W. Reason (149)
 Calvin Thomas Redden (150)
 Vincent J. Reilly (151)
 Emalene F. Remmie (152)
 independent executrix of the
 estate of John Alvin Remmie
 Francisco Rendon (153)
 John C. Riley (154)
 Jack L. Rivett (155)
 Edwin H. Roark (156)
 Francis Charles Roberts (157)
 Thomas Joseph Roeseler (158)
 Bobby L. Rogers (159)
 Edmund L. Rondeau (160)
 Joseph Byron Rothwell (161)
 David J. Rummel (162)
 John W. Rumpf (163)
 William H. Satterfield (164)
 James R. Schaefer (165)
 Paul Morris Schumacher (166)
 Alfred Segal (167)
 Isaac O. Serrano (168)
 Edward H. Sewell (169)
 Osco Shearer, II (170)
 Arnold W. Shelton (171)
 Daniel J. Shepherd (172)
 William F. Shimonkevitz (173)
 Eugene Francis Shine, Jr. (174)
 Harold P. Shipley (175)
 James L. Simmons (176)
 Jesse A. Simpson (177)
 Edward B. Smith (178)
 James O. Smith (179)
 Richard Snyder (180)
 Estanislao C. Soria (181)
 Alfredo Sotello (182)
 Harry R. Steyerma, Sr. (183)
 Edwin S. Stone, III (184)
 Robert G. Streeper (185)
 Walter H. Stuenzi (186)
 Floyd H. Suther (187)
 Albert A. Taylor (188)
 Herbert E. Tennermann (189)
 Wayne A. Thomas (190)

Bertie I. Toczko (191)	Howard Robert Weiss (202)
executrix of the estate	Albert Wernik (203)
of Thaddeus Toczko	J. L. Whitaker (204)
James Robert Turnbull (192)	John R. Whitworth (205)
Crestino J. Valdez (193)	George R. Wielang (206)
Archie Martin Vest (194)	Arthur M. Williams (207)
Virgil V. Villa (195)	Victor L. Williams (208)
Peter Vitale (196)	William A. Williams (209)
Alphonza Walker (197)	Paul E. Wilson (210)
Johnathan B. Walker (198)	Dean A. Wright (211)
LaDonna M. Walsh (199)	James Robert Wright (212)
Lloyd B. Watts (200)	Gordon L. Wunn (213)
Donald G. Weidinger, Sr. (201)	John Zester, Jr. (214)

Donald E. Baker, et al. v. United States,-
United States Claims Court, No. 257-85C

Donald E. Baker (1)	Mose Jackson, Sr. (46)
Thomas O. Batey (2)	Ozelle J. Jones (47)
Ralph L. Baude (3)	John P. Kaylor (48)
Samuel N. Blatchford (4)	Michael James Kennedy (49)
Raymond L. Bradshaw (5)	William B. King (50)
Alfred L. Braun (6)	Michael M. Kitlan (51)
Weltner J. Broome (7)	Sidney A. Knutson (52)
Avery C. Bruce, Jr. (8)	Raymond B. Krum (53)
Jerry J. Buckingham (9)	Anthony J. Landa (54)
Arthur Chambers (10)	Donald Bruce Lee (55)
William W. Clark (11)	Gabriel N. Lewis, Jr. (56)
Martin Cohen (12)	Charles H. Libbey (57)
Daniel L. Cordell (13)	Francis A. Long (58)
Frederick P. Crist (14)	Michael P. Lutzko, Jr. (59)
Clyde V. Duling, Jr. (15)	J. Alan MacInnis (60)
Rodolfo R. Enderle (16)	John Maruhnich (61)
Vernon M. Eppley (17)	Ralph A. Mattera (62)
Forrest L. Erickson (18)	Lawrence E. Mauch (63)
Louis H. Fender (19)	William P. McClanahan (64)
Jack V. Folsom (20)	James E. McCoy (65)
Louis A. Friloux, Jr. (21)	Henry I. McGehee (66)
Joseph E. Fritz (22)	Charles L. McGorry, Jr. (67)
Elise G. Frost (23)	David W. McLendon (68)
sole heir of	Thomas C. McNeal (69)
Keith Gilbert Frost	William A. Miller (70)
Francisco L.G. Garrido (24)	Charles Hearn Mobley (71)
George A. Gibbs (25)	Eugene R. Modrich (72)
Ross E. Gidley (26)	Ralph M. Musick (73)
Arthur H. Gilcrease (27)	Nicholas Nayko (74)
William C. Gonyeau (28)	Henry Francis Nesser, Sr. (75)
Celso Oscar Gonzalez (29)	Timothy L. Neumann (76)
George W. Graham (30)	James R. Nierenhausen (77)
Vincent A. Grat (31)	Charles C. Olczak (78)
Jack J. Greger (32)	William T. O'Riley (79)
John G. Grindstaff (33)	James W. Pero (80)
Marion Lee Hancock (34)	Virgil L. Perry (81)
Robert L. Hayden (35)	George A. Petras (82)
Robert E. Higgason, Jr. (36)	Karl H. Pfeiffer, Jr. (83)
Charles E. Higgins (37)	Weldon R. Presler (84)
Wallace A. Hoback (38)	Charles Provencio (85)
Raymond E. Hogan (39)	Clifton H. Pruitt (86)
Robert C. Hogle (40)	Armando M. Quartulli (87)
William W. Hosler, Jr. (41)	Floyd P. Redding (88)
George Francis Houston (42)	Michael J. Reilly (89)
David T. Hudson (43)	James Franklin Roark (90)
Stephen Humpa (44)	Wesley L. Roberts, Sr. (91)
James Abbott Hyatt (45)	Kenneth W. Rolph (92)

William F. Ryan (93)
Maurice Sandson (94)
Kenneth G. Schoen (95)
Ralph H. Sewell (96)
Charles T. Sizemore (97)
Charles M. Smith (98)
Richard N. Sorn (99)
John J. Stafford (100)
Austin D. Starkey (101)
Carlee Steed (102)
Samuel Stephens, Jr. (103)
David L. Stroman (104)
Conrad S. Syronney (105)
Earl G. Taylor (106)
David A. Thompson (107)

Charles H. Thornton (108)
Renato V. Trapani (109)
Charles M. Walden (110)
Robert S. Waldron (111)
John H. Walker (112)
James L. White (113)
Borie Williams (114)
Kenneth T. Williams (115)
Charles M. Wilson (116)
Ray L. Wilson (117)
Leon L. Wolf (118)
Herbert H. Wolfe (119)
Albert G. Yost, Sr. (120)
John W. Zaremba (121)
Bodo Zienow (122)

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United States Claims Court, No. 441-85C

Oswaldo Alvarado (1)
Theodore S. Block (2)
Richard C. Capps (3)
Gerald P. Chapman (4)
Ralph G. Clements (5)
Paul P. Clougherty (6)
John W. Coalter (7)
Gordon G. Cooke (8)
Joseph P.A. Cote (9)
Joe J. Cruze (10)
Robert L. Dean (11)
Lawrence S. Devore (12)
Dwight T. DeVoss (13)
Albert F. Dozier (14)
James P. Foley (15)
James L. Grider (16)
Charles Winton Groves (17)
Jeiel A. Hall, Jr. (18)
Charles Hornyak (19)
Gerald F. Humphrey (20)
Chester F. Jennings (21)
Bruce Kimber (22)
Robert Alfred Kinsey (23)
George E. LeBlanc, Jr. (24)
Robert I. Lemire (25)
James Long (26)

Martha L. Ludeman (27)
sole heir of
Rodney A. Ludeman
Cornelius E. McBrayer (28)
Evan McGhee (29)
Charles E. McKie (30)
Ross D. Moore (31)
Joseph T. Norton, Jr. (32)
Allen H. Osnes (33)
Alfred J. Owens (34)
Richard W. Park (35)
John M. Pearson (36)
George H. Perry (37)
Benny Persichilli (38)
Karen A. Petry (39)
sole heir of
Robert F. Petry, Jr.
Willard Dean Pfeiffer (40)
Gordon A. Pierce (41)
James K. Pitman (42)
Raymond E. Roeder (43)
John H. Rule (44)
Ed L. Smith (45)
Joseph N. Tarazewich (46)
William P. Toth (47)
Kenneth E. Walters (48)
Frank Williams (49)
John W.L. Womack (50)

Jimmie R. Armstrong, et al. v. United States,
United States Claims Court, No. 582-85C

Jimmie R. Armstrong (1)	Joseph Koonin (47)
Robert P. Bartley (2)	Theodore F. Kopfman (48)
Edward R. Bizjak, Sr. (3)	John N. Koun (49)
James C. Brennan, Jr. (4)	Joseph Kovalchik (50)
Raymond Donald Briercheck (5)	Jewell D. Lee (51)
James H. Bryner (6)	Mildred O. Lemon (52)
Delmer H. Bussell (7)	Paul Lilling (53)
Joe Reed Carney (8)	Nicholas W. Lynch (54)
Edward P. Carroll (9)	Benjamin Henry Martin (55)
Elizabeth M. Cassesse (10)	Mariano E. Martinez (56)
Robert M. Chambers (11)	Ross P. McKinney (57)
Joseph D. Chavez (12)	Raymond Ross Mendonsa (58)
Louis E. Cirillo (13)	Donald G. Morgan (59)
Conrad R. Cormier (14)	Thomas J. Morgan (60)
Ezekiel C. Cortez, Jr. (15)	Earl F. Morris, Jr. (61)
David J. Cromley (16)	Antonio C. Moschetta (62)
Lois C. Crone (17)	Thomas R. Mullen (63)
Charles E. Dailey, Sr. (18)	Felix Muniz (64)
Stephen J. Damin, Jr. (19)	Sheldon Norman (65)
Raymond Dewees, Jr. (20)	Thomas A. Nutt, Jr. (66)
Leonard William Dodson, Jr. (21)	John C. Odum (67)
William E. Dussetschleger (22)	Harold W. Olson (68)
Earl B. Dyer (23)	Lucius K. Patterson (69)
Ernest C. Eddy (24)	Frederick C. Patton (70)
Willard O. Edwards (25)	Manuel R. Portela (71)
Crystal N. Epperson (26)	Jack A. Powers (72)
Thomas H. Fason (27)	Luis R. Rios-Matta (73)
Marvin L. Feir (28)	Hermon J. Rivella (74)
Robert J. Ferguson (29)	Cirilo Anastacio Rodriguez (75)
Herbert A. Finkelstein (30)	Leroy E. Ross, Jr. (76)
William H. Gallup, Jr. (31)	Charles W. Saar (77)
Charles V. Gardner (32)	Oscar L. Sandoval (78)
Edward Gilmore (33)	David S. Sarnier (79)
Charles J. Gilroy, Jr. (34)	Dale Vernon Schermerhorn (80)
Leon L. Gohmert (35)	Pete Schmick (81)
Joe L. Gomez (36)	Donald G. Scully (82)
William Jay Graves (37)	Jerome H. Sigholz (83)
Walter P. Haar (38)	George Sinitsky (84)
Alvah T. Healy (39)	Andrew Skupaka (85)
Charles E. Holtsman (40)	Lawrence E. Smith (86)
Arthur L. Huber (41)	David H. Souser (87)
William J. Huttig (42)	Chester T. Speed (88)
Milton M. Kaufmann (43)	James Perry Steele (89)
Jack J. Keating (44)	Dale M. Stevens (90)
Arthur C. Kiehl (45)	LaVerne Harry Swanson (91)
John R. King (46)	Paul A. Swanson (92)

Eloy L. Telles, Sr. (93)
Myron E. Thomas (94)
Douglas B. Tipton (95)
Clifford G. Tryon (96)
Vernon C. Tully, Jr. (97)
Leo O. Vezina (98)
Clifford E. Vigil (99)
David R. Von Gal (100)
Ross S. Walker (101)
William B. Walker (102)
Edward L. Warneld (103)

Sara E. Weatherford (104)
Gordon D. Whitney (105)
Wendel H. Wight (106)
Clark Lee Wingate (107)
Roger D. Winslow (108)
David J. Wolbrette (109)
Robert G. Woolweaver (110)
David D. Work (111)
Ross S. Wynott (112)
Robert W. Yonts (113)
Luther H. Young, Jr. (114)

The United States of America was the Defendant-Appellee in each of the above cases.

(2)
No. 86-1312

Supreme Court, U.S.

FILED

APR 9 1987

JOSEPH F. SPANIOLO, JR.

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

CHARLES ROGER ABSHER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT*

**BRIEF FOR THE UNITED STATES
IN OPPOSITION**

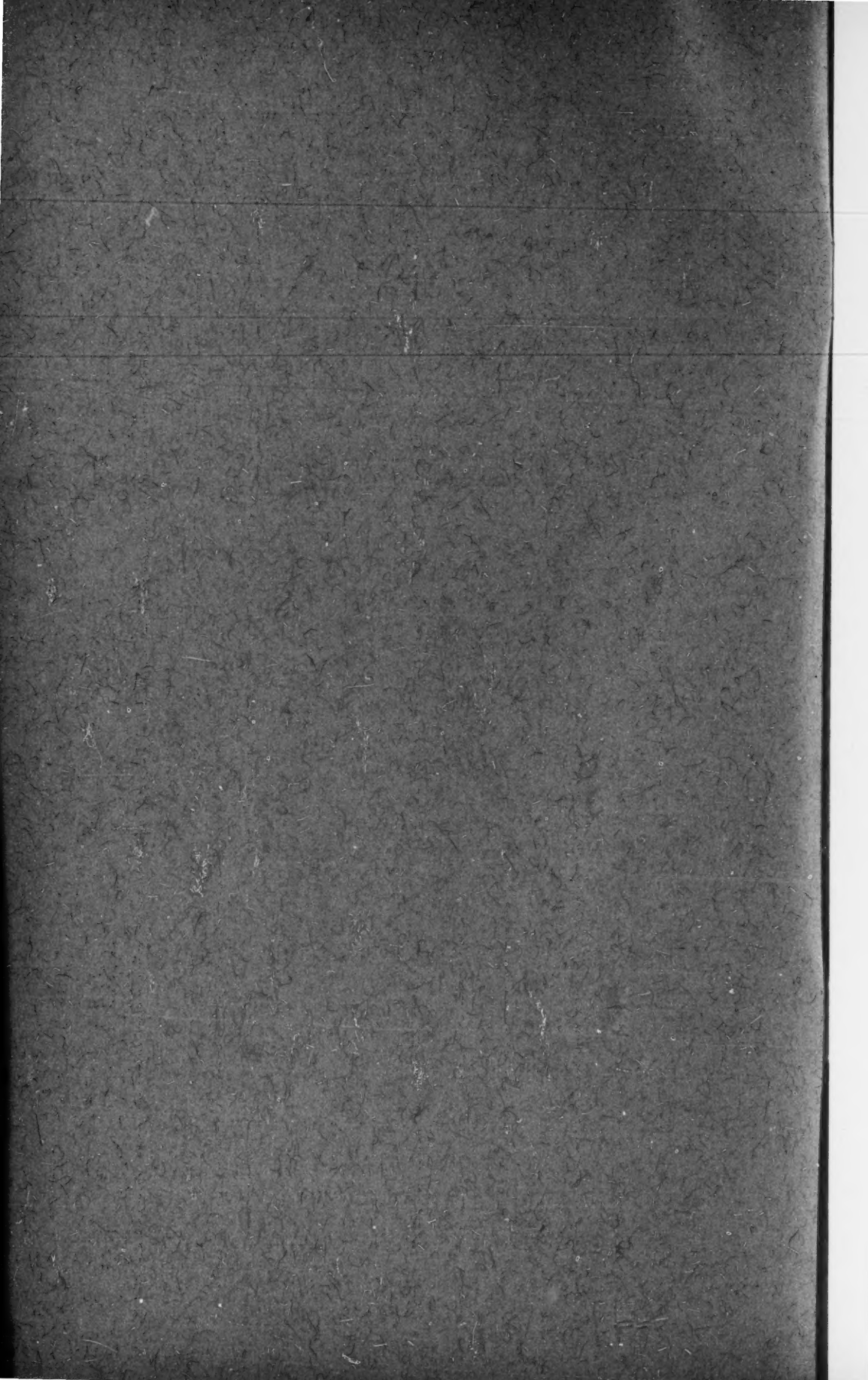
CHARLES FRIED
Solicitor General

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*Department of Justice
Washington, D.C. 20530
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1817P



QUESTION PRESENTED

Whether disabled veterans who have retired from the uniformed services are denied equal protection because they are not permitted to receive both full retirement pay and full veterans disability benefits, whereas retirees under the civil service system are not required to waive a portion of their civil service annuity in order to receive veterans disability benefits.

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In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1312

CHARLES ROGER ABSHER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is reported at 805 F.2d 1025. The opinion of the Claims Court (Pet. App. 6a-15a) is reported at 9 Cl. Ct. 223.

JURISDICTION

The judgment of the court of appeals was entered on November 14, 1986. The petition for a writ of certiorari was filed on February 10, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

38 U.S.C. 3104(a)(1) (misidentified as 38 U.S.C. 3704(a)(1)) and 38 U.S.C. 3105 are reprinted at Pet. 2.

STATEMENT

1. Veterans who have served in the uniformed services for a period of twenty years or more are generally entitled to retirement pay from their respective services. See 10 U.S.C. 3911 *et seq.* (Army); 10 U.S.C. (& Supp. III) 6321 *et seq.* (Navy and Marines); 10 U.S.C. 8911 *et seq.* (Air Force); 14 U.S.C. (& Supp. III) 288-294, 14 U.S.C. (Supp. III) 353-355, 362, 421, 423-424 (Coast Guard); 33 U.S.C. (Supp. III) 853g, 33 U.S.C. 853k, 853l, 33 U.S.C. (& Supp. III) 853o (National Oceanographic and Atmospheric Administration); 42 U.S.C. (& Supp. III) 212 (Public Health Service). Retirement pay is taxed as ordinary income. Veterans with a service-related disability may also qualify for disability compensation and pensions administered by the Veterans Administration (VA). 38 U.S.C. (& Supp. III) 301 *et seq.* These VA benefits vary according to the degree of the disability, without regard to rank or length of service (38 U.S.C. (& Supp. III) 314). They are exempt from taxation (38 U.S.C. 3101; 26 U.S.C. 104(a)(4)).

Retired veterans may not, however, receive both full retirement pay and disability benefits (38 U.S.C. 3104). Such dual payments have been expressly prohibited since 1891, originally by a flat ban on retirees receiving any disability benefits at all (Act of Mar. 3, 1891, ch. 548, § 1, 26 Stat. 1082). Starting in 1944, however, Congress permitted retirees to waive an amount of retirement pay equal to the amount they are eligible to receive in disability benefits, Act of May 27, 1944, ch. 209, 58 Stat. 230 *et seq.* (currently codified at 38 U.S.C. 3105), so that retirees may receive the full benefit of the tax-exempt status of their disability benefits.

2. Petitioners are 2,048 disabled military retirees. They challenged the constitutionality of 38 U.S.C. 3104 and 3105 in the Claims Court, contending that the ban on dual compensation and its accompanying waiver requirement violate

the equal protection component of the Fifth Amendment because civil service retirees who also qualify for VA disability benefits are not required to waive a portion of their civil service annuities in order to receive the VA benefits. Petitioners sought the amount of back retirement pay they had waived during the six years preceding the filing of their complaint.

The Claims Court (Pet. App. 6a-15a) granted summary judgment for the United States. The court held that the prohibition on dual compensation in 38 U.S.C. 3104 and the waiver provision of 38 U.S.C. 3105 together serve the legitimate objectives of limiting public spending and placing a ceiling on the amount of compensation received as a result of uniformed service (Pet. App. 12a-13a). Moreover, the court held, Congress has pursued these objectives in a rational manner. The court rejected petitioners' contention that there is no rational distinction between military retirees and other federal employees who are not required to waive their annuities in order to receive VA disability benefits (*id.* at 13a-14a). Pointing to the "preferential treatment deservedly provided retirees of the uniformed services"—including the young age at which military personnel can retire and numerous "commissary, recreational, travel and health benefits in addition to their retired pay"—the court concluded that these special benefits provided "a rational basis for limiting the amount of compensation [petitioners] receive" (*ibid.*). Putting the point another way, the court held that "[t]he special benefits accorded retirees of the uniformed services are such that this class of individuals is not situated similarly to other groups that are not required to waive retirement pay to receive tax-free VA benefits" (*id.* at 14a).

The court of appeals affirmed (Pet. App. 1a-5a). It agreed with the Claims Court that the legislative decision to limit the compensation received by uniformed services retirees,

while permitting them to take full advantage of the tax-exempt VA disability benefits, is "the type of balance Congress is entitled to strike" (*id.* at 4a). And the court found the differences between civil service retirement and military retirement more than sufficient to explain the disparate treatment of the two groups of retirees. The court concluded that "[t]he balance [Congress] has thus struck is not only rational, it also bears a demonstrably fair and substantial relation to legitimate legislative objectives" (*id.* at 5a).

ARGUMENT

The decision of the court of appeals is correct. It does not conflict with any decision of this Court or of any other court of appeals. To the contrary, it is consistent with a long line of decisions rejecting attempts to use the Equal Protection Clause to obtain greater benefits than Congress has chosen to provide under a particular program. *E.g.*, *Bowen v. Owens*, No. 84-1905 (May 19, 1986); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980); *Mathews v. DeCastro*, 429 U.S. 181 (1976); *Weinberger v. Salfi*, 422 U.S. 749 (1975); *Richardson v. Belcher*, 404 U.S. 78 (1971); *Flemming v. Nestor*, 363 U.S. 603 (1960). No further review is warranted.

1. To establish a denial of equal protection, a plaintiff group must make a two-part showing. First, it must show disparate treatment: it must identify a similarly situated group and show that it is being treated less favorably than that group. *City of Cleburne v. Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985), slip op. 6; *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Second, it must show that there is no justification for the disparity; where, as here, no "suspect classification" or "fundamental interest" is involved, the test is whether the difference in treatment "is so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational." *Vance v. Bradley*, 440 U.S. 93, 97

(1979). See also *United States Railroad Retirement Board v. Fritz*, 449 U.S. at 174-176; *Flemming v. Nestor*, 363 U.S. at 611.

2. Petitioner's showing here falls far short. The bundle of retirement benefits for uniformed service personnel evolved separately, and differs in many respects, from the bundle of benefits for civil service personnel. Military retirement benefits are tailored to Congress's perception of what is needed to attract qualified personnel, to ensure dedicated service and an orderly pattern of promotion, and to provide suitably for retirement. Cf. *Vance v. Bradley*, 440 U.S. at 109 ("The Foreign Service retirement system and the Civil Service retirement system are packages of benefits, requirements, and restrictions serving many different purposes."). Petitioners offer no reason whatever to conclude that military and civil service personnel must be treated identically, or that each group is constitutionally entitled to the benefit of any provision enjoyed by the other. Cf. *id.* at 98-102 (rejecting equal protection challenge to mandatory retirement age in Foreign Service).

a. The dual benefits provision cannot be viewed in isolation. The military retirement system differs in numerous respects from the civil service retirement system, offering substantial advantages to military personnel that are not enjoyed by their counterparts in the civil service. Three examples will illustrate. First, uniformed services personnel make no contribution to any retirement fund. Civil service personnel, by contrast, must make regular contributions to their retirement fund of up to 7% of their salaries. 5 U.S.C. 8334(a)(1).¹ Second, uniformed services personnel generally may retire after 20 years of service, regardless of age. 10

¹A disabled veteran who enters the civil service does not evade the employee-contribution requirement. If he wishes civil service retirement credit for his years of military service he usually must (a) forfeit any uniformed services retired pay to which he would otherwise be

U.S.C. 3911, 3914 (Army); 10 U.S.C. 6323, 6327 (Navy and Marines); 10 U.S.C. 8911, 8914 (Air Force); 14 U.S.C. 291, 14 U.S.C. (Supp. III) 355 (Coast Guard); 33 U.S.C. 853/ (National Oceanographic and Atmospheric Administration); 42 U.S.C. (& Supp. III) 212(a) (Public Health Service). The average age of enlisted personnel at retirement is 42, and officers on average retire at 46 (Pet. App. 14a; Office of the Actuary, Defense Manpower Data Center, *FY 1983 Defense Statistical Report on the Military Retirement System* 91 (1984)). Civil service personnel, by contrast, must generally wait until age 62 to retire and receive benefits. 5 U.S.C. 8338(a).² Third, in addition to retired pay, uniformed service retirees also receive commissary, recreational, travel, and health benefits not available to civil service retirees. See, e.g., Army Reg. 40-3, ¶¶ 4-11 (Feb. 15, 1985) (medical services); *id.* at 60-20, ¶¶ 2-9 (Aug. 1, 1984) (exchange privileges); *id.* at 30-19, App. B (July 1, 1980) (commissary privileges); *id.* at 215-2, ch. 2 (Mar. 6, 1984) (recreational privileges).

b. Congress, weighing the needs of the military services, established a package of retirement benefits to meet those needs. Differences between that package and the benefits afforded to other government personnel do not violate the

entitled, 5 U.S.C. 8332(c)(2); Pub. L. No. 99-335, § 101(a), 100 Stat. 523 (to be codified at 5 U.S.C. 8411(c)(2)), and (b) make a contribution to the civil service retirement fund of either 7% or 3% for each year of military service performed after December 31, 1956, depending upon whether he is subject to the Civil Service Retirement System (5 U.S.C. 8332(c)(1)(B) and (j)(2)(A); 5 U.S.C. (& Supp. III) 8334(j); 5 C.F.R. 831.301(b)), or the new Federal Employees' Retirement System (Pub. L. No. 99-335, § 101(a), 100 Stat. 523, 536-537 (to be codified at 5 U.S.C. 8411(c)(1)(B), 8422(e))).

²There are, however, special provisions that permit a civil service employee with 30 years of service to retire at age 55 (5 U.S.C. 8336(a)), or with 20 years of service at age 60 (5 U.S.C. 8336(b)).

Equal Protection Clause unless "patently arbitrary or irrational." *United States Railroad Retirement Board v. Fritz*, 449 U.S. at 177; see *Vance v. Bradley*, 440 U.S. at 96-97; *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973); *City of Cleburne v. Cleburne Living Center, Inc.*, slip op. 6.

For example, in *Vance v. Bradley*, *supra*, a group of Foreign Service employees challenged a requirement that they retire at age 60 as a violation of equal protection because civil service employees are not subject to the same requirement. This Court noted that the age limit could not be struck down on this ground unless the cap was shown not to be rationally related "to the achievement of any combination of legitimate purposes." 440 U.S. at 97. The Court found that the objectives of stimulating superior performance in the Foreign Service by assuring that opportunities for promotion are available, and ensuring that Foreign Service personnel are up to the rigors of overseas duty, provide ample justification for having a mandatory retirement age in the Foreign Service.

Similarly, a retirement system for the uniformed services that requires no employee contributions and permits early retirement but does not allow dual payments clearly bears a rational relationship to the needs of the uniformed services. As this Court explained in *McCarty v. McCarty*, 453 U.S. 210, 212-213 (1981) (footnotes and citations omitted):

The impetus for [the enactment of a military retirement system during the Civil War] was the need to encourage or force the retirement of officers who were not fit for wartime duty. Thus, from its inception, the military nondisability retirement system has been "as much a personnel management tool as an income maintenance method," the system was and is designed not only to provide for retired officers, but also to ensure a "young and vigorous" military force, to create

an orderly pattern of promotion, and to serve as a recruiting and re-enlistment inducement.

In keeping with these purposes, Congress has crafted a retirement program for members of the uniformed services that imposes no burden on current income and that encourages both enlistment and early retirement by permitting retirement after 20 years of service with a lifetime annuity and substantial post-retirement in-kind benefits. In this way, the needs for "a 'young and vigorous' military force [and] an orderly pattern of promotion" are served. Having crafted such a package of retirement benefits for uniformed service employees, Congress obviously could decide to save money and keep benefits at what it thought an appropriate level by denying a pro tanto portion of retirement pay to uniformed service retirees who are also receiving VA disability benefits, without at the same time denying dual benefits to civil service retirees, whose retirement fund comes in part from their own mandatory contributions and who will generally have been required to serve to a greater age. To hold otherwise would expose virtually every provision for compensation or benefits to any class of government employees—and much else besides—to judicial scrutiny for comparability to some other provision affecting some other class.

The debates on the ban on dual compensation evinced a concern with the rising cost of military pensions and a belief that dual compensation was excessive and improper. 21 Cong. Rec. 8507-8508, 8509-8522 (1890); 22 Cong. Rec. 134, 2191-2192 (1891). These were legitimate concerns then and they are legitimate concerns now, especially when viewed in light of the various special advantages of military retirement.

Congress could, of course, have provided more generously for uniformed service retirees. In just the past ten years, in fact, more than twenty bills have been introduced

to amend 38 U.S.C. 3104 and 3105, but none has been enacted. See, e.g., H.R. 867, 99th Cong., 1st Sess. (1985); H.R. 1366, 99th Cong., 1st Sess. (1985); H.R. 325, 98th Cong., 1st Sess. (1983); H.R. 468, 98th Cong., 1st Sess. (1983); S. 783, 97th Cong., 1st Sess. (1981); H.R. 517, 97th Cong., 1st Sess. (1981); H.R. 2141, 97th Cong., 1st Sess. (1981); S. 1907, 96th Cong., 1st Sess. (1979); H.R. 823, 96th Cong., 1st Sess. (1979); H.R. 722, 95th Cong., 1st Sess. (1977). See also Pet. App. 14a-15a. As this Court said in rejecting a similar attempt to win in this Court what a group of retirees had failed to win in Congress, "[t]o be sure, [the retiree] lost a political battle in which he had a strong interest, but this is neither the first nor the last time that such a result will occur in the legislative forum." *United States Railroad Retirement Board v. Fritz*, 449 U.S. at 179.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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